



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CIVIL CASE NO. 1125/2022

In the matter between

Joseph Gavu Dlamini

Plaintiff

V

Swaziland Employee Benefit Consultants (Pty) Ltd

t/a Tibiyo Insurance Group

1st Defendant

Oracle Life Eswatini Limited

2nd Defendant

Neutral citation: *Joseph Gavu Dlamini v Swaziland Employee Benefit Consultants (Pty) Ltd t/a Tibiyo Insurance Group and Another (1125/2022) [2025] SZHC 127 [2025] (2nd July 2025).*

Coram : Tshabalala J

Heard : 31/05/2024

Delivered : 02/07/2025

Summary: The Plaintiff sued out summons claiming payment of disability benefit against the 1st and 2nd defendants.

This is a Ruling on Points in limine and Special Pleas raised, respectively by the 1st Defendant (insurance broker) and 2nd Defendant (insurer). Both defendants raised objections based on

misjoinder, each alleging that it was not a party to the underlying contract between the Plaintiff's employer and the insurer. In addition, the 2nd Defendant pleaded Special pleas on prescription and jurisdiction.

Held: Points in limine and special pleas raised by the defendants have not been established, and therefore dismissed.

RULING ON POINTS IN LIMINE AND SPECIAL PLEAS.

- [1] The Plaintiff filed summons with this court against the 1st and 2nd Defendants for a claim of payment of disability benefit dating back from 2004 to the date of summons (15 June 2022).
- [2] The Plaintiff is a former employee of defunct Swaziland Contract Furnishers, a heavy-duty driver from the year 1989 to December 2003.¹
- [3] Both the 1st and 2nd Defendants are locally registered entities, the former as an insurance broker, and the latter an insurance company.
- [4] In 2003, during the course of his employment, the Plaintiff sustained serious injuries while off-loading furniture from a truck. This resulted in his permanent disability, leading to retirement on medical grounds, at the end of the same year.

¹ Paragraph 6 of the Particulars of claim.

[5] It is Plaintiff's case that prior to his injury his employer, Contract Furnishers, entered into an insurance agreement with Southern Life Association Limited in 1997, in terms of which the former's employees, including the Plaintiff, were covered against death and disability resulting from accidents during the course and scope of their employment.

[6] The Plaintiff has attached to the summons Annexure "A" titled "**Swaziland Contract Furnishers Group Life Assurance Scheme Policy**". According to Annexure "A" the policy was signed on the 29 June 1998, and commenced from the 1st February 1997. Annexure "A" states on the face of it that,²

"The Southern undertakes, on payment of premiums in terms of this policy to:

✓ provide cover for members, and

✓ administer the scheme in accordance with the Rules and conditions of this policy."

Plaintiff's Particulars of Claim

[7] The Plaintiff states that his claim against the Defendants is based on Annexure "A" in terms of which he says disability / benefit is due to him. While there is no dispute that the claimed benefits may be due to the Plaintiff in terms of Annexure "A", Defendants point out that they were not party to the contract and that they have been improperly cited in the suit. Hence both Defendants filed preliminary points of law and objections of misjoinder

² The signature page.

among others. In this context the Plaintiff's particulars of claim must demonstrate that the claim is brought against the correct parties.

- [8] According to Plaintiff's particulars of claim, the 1st Defendant rejected Plaintiff's claim for disability benefit and directed him to Eswatini Royal Insurance Corporation (ESRIC). The latter in turn rejected Plaintiff's claim, stating (according to the Plaintiff) that his name did not appear in the insurer's system.
- [9] Plaintiff's Particulars of claim seek to link the 1st Defendant to the claim through Annexure "B", a document titled **Swaziland Contract Furnishers**. The first two introductory paragraphs of the document read:
- "Swaziland Contract Furnishers has decided to introduce to all its employees a Death and Disability benefit.*
- The purpose of this paper is to introduce you to the Benefits offered by your employer. It is very important that you study this paper in order to understand the various benefits that you are entitled [sic] "*
- [10] According to the Plaintiff, Annexure "B" was issued by 1st Defendant as confirmation of the insurance cover. Annexure "B" is silent on the underlying insurer's name for provision of the stated benefits, considering that the 1st Defendant was a broker (Presumably for various employers). Was it in respect of Southern Life Association Limited, SRIC or other? Nonetheless, the 1st Defendant has not unequivocally disputed Annexure "B," save to state *"Defendant has no knowledge of the contents of this paragraph and cannot admit the same as such they are put into dispute."*³

³ See paragraph 10 of the 1st Defendant.

[11] The 2nd Defendant is sought to be linked to the claim by an allegation that it took over the business from its predecessor Metropolitan Life, (including the liability to the Plaintiff); that Metropolitan had taken over from Momentum. Who in turn taken over from Southern Life. The 2nd Defendant vehemently denies any lineage connections with Southern Life. It is noted that the 2nd Defendant does not dispute alleged connections with either Momentum or Metropolitan.

[12] It is in this context that the Defendants filed their respective objections by way of Special plea and others. I deal with them hereunder.

Misjoinder.

[13] It is submitted on behalf of the 1st Defendant that it does not have substantive interest in the matter, and therefore should not have been joined in the proceedings. The 1st Defendant points out that it is not a party to the contract between the Plaintiff and his employer on one part and Southern Life on the other. The 1st Defendant argues that as a broker it had no contractual relationship with the Plaintiff and his employer. The 1st Defendant submits that a misjoinder has occurred, and therefore the claim against it should be dismissed.

[14] Likewise the 2nd Defendant proclaims that it has no direct or substantial interest in the matter, and therefore it should not have been cited as a defendant. The 2nd Defendant denies the allegation that it took over the business that originated from Southern Life.

Prescription

[15] The 2nd Defendant argues that the claim has prescribed, alleging that there has been unreasonable lapse of time since the time the Plaintiff should have

lodged the suit and the time when he did. The 2nd Defendant alleges that Plaintiff's insurance policy may have been valid at the time of his disability. The 2nd Defendant puts the lapsed period of time to 17 years, which is disputed by the Plaintiff. The 2nd Defendant submits that no reasonable explanation for the delay has been furnished by the Plaintiff.

Jurisdiction

- [16] The 2nd Defendant alleges that this court has no jurisdiction over the matter, averring that the insurance policy contract was concluded in the Republic of South Africa (SA), that the cause of action arose in South Africa, that parties to the agreement are not all based in Eswatini, that the Plaintiff must follow the rightful defendant to its area of domicile in terms of the rules of jurisdiction⁴

Analysis and finding

Misjoinder

- [17] Both Defendants aver that they have no interest in the Plaintiff's claim, and that they should not have been cited as defendants in the suit. For the 1st Defendant the issue of misjoinder is raised as a "*point in limine*", while the 2nd Defendant raised it as special plea. Regardless of the nomenclature preferred by each Defendant, the effect is that the objection is raised as a preliminary point, requiring the court to deal with it before delving into the merits of the case or hearing oral evidence. Both Defendants submit that the Plaintiff's case must be dismissed on the basis of misjoinder. However, the proper approach by the courts, where such objection is upheld is to release the party that has been improperly joined from the proceedings, and not

⁴ Paragraph 15 of the 2nd Defendant Plea.

necessarily dismiss the claim. See **Beck's Theory on Principles of Pleading**.⁵

- [18] Both the 1st and 2nd Defendant state, respectively, that they have no "*direct and substantial interest*" in the matter. The phrase direct and substantial interest was interpreted to mean a legal interest in the subject matter of the litigation, and not merely an indirect commercial interest. See **Fakroodeen v Fakroodeen and Others, NNO**⁶ See also **Green v Swaziland Royal Insurance Corporation & Another**.⁷
- [19] The authors, **Herbstein & Van Winsen**,⁸ recognize that parties are often joined for reasons of convenience and equity, and to avoid oppression or multiplicity of actions. This kind of joinder is separate from circumstances in which it is essential to join a party because of the interest a party has in the matter, in which circumstances the court has no discretion and will not allow the matter to proceed without joinder.⁹
- [20] *In casu* the 1st and 2nd Defendant are implicated in differing degrees in the Plaintiff's claim. For instance, the 1st Defendant has been shown as a broker in the relationship between the Plaintiff's employer and the insurer. The 1st Defendant could neither confirm nor deny Plaintiff's assertion that it collected premiums from the Plaintiff's employer in respect of the insurance cover. Not only that. The 1st Defendant directed or led the Plaintiff to lodge the futile claim with Eswatini Royal Insurance Corporation (ESRIC). It is also the 1st Defendant who according to the Plaintiff's particulars of claim,

⁵ Page 158.

⁶ [1971] (3) D. & C.L.D.)

⁷ Civil Case No. 1451/2010.

⁸ Civil Practice of the Supreme Court of South Africa 5th edition.

⁹ Ibid page 208.

provided Annexure “B” which bears its name, which unpacked the benefits of the cover in respect of Swaziland Contract Employees, including the Plaintiff. The 1st Defendant has not unequivocally distanced itself from Annexure “B” nor the context in which it is introduced by the Plaintiff.

- [21] The 2nd Defendant is entangled in the claim. Annexure “JGD1” to Plaintiff’s Replication lends some credence to Plaintiff’s claim that the 2nd Defendant could have inherited or taken over Plaintiff’s employer’s policy in question. Annexure JGD1 is a letter apparently on the 2nd Defendant’s letterheads dated 11/10/2021 captioned “**Re: Disability Claim – Joseph Gavu Dlamini.**” The first paragraph of the letter suggests that the Plaintiff housed the Contract Furnishers Scheme at some stage. The letter states that the scheme was terminated and that no further premiums were received following termination. This letter paints quite a different picture from the 2nd Defendant’s Plea that it never took over any scheme involving the Plaintiff from any entity. The letter informs Plaintiff’s then attorneys that Oracle (2nd Defendant) was a new name for Momentum.
- [22] Clearly the 1st and 2nd Defendants have some category of interest in the matter. It is the view of this court that they qualify, at this stage, under joinder of convenience. It is noteworthy that the points *in limine* and Special Pleas were argued on the basis of averments in the pleadings. No evidence was led. It is the view of this court that the Plaintiff be given an opportunity to present his evidence at a trial.

Prescription

- [23] The 2nd Defendant’s Special Plea of prescription is hinged on the assertion that the Plaintiff sued for his disability benefit 17 years after it was due. It is common cause that there is no legislative limit on prescription in this

jurisdiction. Recourse in these circumstances is had to the Roman Dutch law which is our common law. The court was referred to the case of **USA Distillers Pty Ltd v Umcebo Mining (Pty) Ltd**.¹⁰ MJ Dlamini JA's analysis and finding therein is that the policy underlying the law of prescription is to maintain the public policy regarding finality of litigation, and the need to prosecute claims while within easy memory.¹¹ This court associates itself entirely with the above public policy prescript stated by the Supreme Court.

[24] The Plaintiff avers that the period of 17 years alleged by the 2nd Defendant is not correct nor applicable because the Plaintiff never sat on his laurels. Since 2004 when the trigger for the benefit materialized, the Plaintiff asserts that he has been knocking at Defendants' and others' doors presenting his claim which was declined, until he eventually launched these proceedings.

[25] The court takes into account that there is no general statute of prescription, and in the circumstances the concept of reasonableness applies. In determining whether the lapse of time is reasonable or not, each case ought to be considered on its peculiar facts and circumstances. The court must also take into account that the Plaintiff did pursue his claim albeit not immediately through the courts. During his efforts he was thrown from pillar to post. His efforts were compounded by the fact of his erstwhile employer closing down, and this seemed to have deprived him of the institutional support that he needed. The Plaintiff was a labourer, and it can be assumed or understood that he may not have had the benefit the necessary level of proficiency on the matter. It is in this context that the court views the Plaintiff's pursuit of his claim. The fact that he did not immediately approach the courts, should not detract from his prior efforts.

¹⁰ SZSC Case No. 89/2017.

¹¹ Ibid at paragraph [69].

[26] The court will therefore not only focus on 2004 as the time when the claim became due, in disregard the Plaintiff's efforts and plight to get redress before lodging the suit in 2022. For the reasons stated above the court does not support the view that the claim has prescribed.

Jurisdiction

[27] The point made by the 2nd Defendant is that the Plaintiff's claim is basically against Southern Life, a South Africa entity and that the Plaintiff is wrong to sue the Defendants. It is submitted that if the court upholds this analysis, then the court should find that it has no jurisdiction. I am unable to follow the logic in this argument, and how it supports lack of jurisdiction of the court. The Defendants and not Southern Life are sued in this matter, whether rightly so or not. The Special Plea is misplaced and misguided.

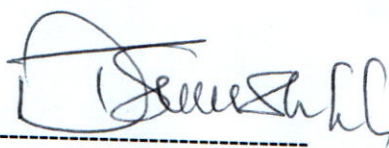
[28] In the result,

The 1st Defendant's point *in limine* on misjoinder is dismissed;

The 2nd Defendant's Special Pleas on misjoinder, prescription and jurisdiction are dismissed.

Costs follow the results.

Both Defendants have pleaded over, and therefore the court orders that the matter goes to trial.



D Tshabalala
Judge

For the Plaintiff: X. Mthethwa (PM Dlamini Attorneys)

For the 1st Defendant: J. Henwood (Henwood & Company)

For the 2nd Defendant: V. Dlamini (Boxal-Smith Attorneys)