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Rademeyer v Ferreira 2025 (2) SA 1 (CC)

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INTRODUCTION

The Constitutional Court was presented with an inquiry into extinctive prescription and its judicial interruption in the case of *Rademeyer v Ferreira (2025 (2) SA 1 (CC)*. The root of the case stems from whether the institution of legal proceedings for specific performance interrupted prescription for a subsequent damages claim. The court's findings were divided, with the majority upholding the plea of prescription and the minority arguing that prescription had been interrupted.

BACKGROUND

In 2008, Mr Ferreira, the respondent, developed a residential estate in Theescombe, Port Elizabeth, and sold one of the subdivided properties to Mr Rademeyer, the applicant. After the applicant failed to meet his contractual obligations in terms of the sale agreement, the respondent obtained a court order in 2012 for specific performance. The applicant remained in breach of the court order, resulting in the respondent lawfully cancelling the sale agreement. Upon instituting a damages claim in 2016, the respondent was met with a special plea of prescription, contending that the claim had become time-barred under section 11(d) of the Prescription Act 68 of 1969 ("**the Act**").

THE MAJORITY JUDGMENT

The majority found that the respondent's damages claim had indeed prescribed under the Act. The initial 2012 application for specific performance did not interrupt prescription under section 15(1)[1] of the Act, as it did not concern a claim for damages. The damages claim arose only upon cancellation on 23 August 2012 and prescribed in 2015. The respondent instituted a claim for damages in 2016, thus it fell outside the prescribed three-year period. The court emphasised that specific performance and damages are distinct remedies, and initiating court proceedings for the former did not interrupt prescription in a claim for the latter. The applicant's special plea was accordingly upheld.

THE MINORITY JUDGMENT

The minority held that the initial proceedings interrupted prescription, as both the specific performance and the damages claims stemmed from the same breach of contract. Emphasising the double-barrelled procedure endorsed in *Custom Credit Corp v Shembe*[2], the minority viewed the original application as part of a unified enforcement strategy, contending that treating the claims as distinct actions unjustifiably restricted access to justice. The minority maintained that pursuing specific performance while reserving damages aligns with established contractual remedies and should interrupt prescription. Nonetheless, the majority disagreed, holding that the two claims do not constitute the same debt under the Prescription Act.

CONCLUSION

The Constitutional Court's ruling underscores the importance of careful procedural strategy in contractual enforcement cases.

The majority judgment reinforces the principle that prescription is only interrupted when a creditor initiates proceedings for the specific debt in question. Whereas, the minority's position reflects a more flexible approach, emphasising the continuity of claims arising from a single breach.

[1] *of the Prescription Act 68 of 1969, " The running of prescription shall, subject to the provisions of subsection (2), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt."*

[2] *1972 (3) SA 462 (A) ([1972] ZASCA 28)*



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