



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Sanoj Jeewan v Transnet SOC Limited and Another (696/2023) [2024] ZASCA 108 (4 July 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing with no order to costs, an appeal against the decision of the Gauteng Division of the High Court, Pretoria.

The appellant, Mr Sanoj Jeewan (Mr Jeewan), was employed by the first respondent, Transnet SOC Limited (Transnet), as a Corporate Governance Manager, in terms of a written contract of employment (the employment contract) which came into effect on 2 October 2006. As Corporate Governance Manager, Mr Jeewan was regarded as the forensic champion of Transnet. Following a forensic investigation conducted by the second respondent, Ernest & Young (EY), Transnet preferred charges of misconduct against Mr Jeewan. The essence of the charges was that he had breached his contract of employment and code of ethics by establishing and participating in a fraudulent scheme with an external recruitment service provider. After interviewing him in connection with such charges on 20 April 2010, Transnet suspended Mr Jeewan on 21 April 2010. On the same date he submitted a letter of resignation. Despite the letter of resignation, Transnet decided to institute disciplinary proceedings against him. Mr Jeewan was notified on 7 May 2010 that he was required to attend a disciplinary hearing on 14 May 2010. The hearing commenced on 14 May 2010 and was thereafter postponed to 17 May 2010. Mr Jeewan was subsequently found guilty. He was dismissed with immediate effect in terms of a letter signed by Transnet on 14 May 2010. The termination letter further informed Mr Jeewan that he had the right to refer his dismissal to either the Commission for Conciliation, Mediation and Arbitration (CCMA) or to the Transnet Bargaining Council (TBC) within thirty days of his dismissal. Mr Jeewan indeed referred a dispute of unfair dismissal to the TBC in terms of s 191 of the Labour Relations Act 66 of 1995 (LRA) on the grounds that his dismissal was procedurally and substantively unfair. The relief he sought before the TBC was reinstatement to his former employment. Arbitration of the dispute between Mr Jeewan and Transnet took place before the TBC on 1 and 2 September 2011 and thereafter on 24 and 25 January 2012 before Commissioner. On the last day of the hearing, Mr Jeewan withdrew the ground predicated on substantive unfairness, but persisted with the ground that his dismissal was procedurally unfair. On 1 February 2012 the Commissioner issued an award in terms of which she held that Mr Jeewan's dismissal was in fact procedurally fair. Neither Mr Jeewan nor Transnet sought to review the arbitration award or make it an order of court.

On 29 January 2015, Mr Jeewan served summons on Transnet and EY claiming damages in the amount of R57 374 996.02 for breach of his employment contract, alternatively, for delictual damages in the same amount in terms of the common law. The damages claimed were calculated to run from 2010 to 2034, the latter date being the year when Mr Jeewan would have retired upon turning sixty-three years of age as provided for in his employment contract. In response, Transnet delivered a detailed plea which incorporated three special pleas. The first concerned an absence of jurisdiction on the part of the high court to entertain the matter, the second was that Mr Jeewan's claim had prescribed in terms of s 11(d) of the Prescription Act 68 of 1969 (Prescription Act), and the third related to *res judicata*. The high court upheld each of Transnet's special pleas and dismissed Mr Jeewan's claim with costs. Aggrieved by the order of the high court Mr Jeewan applied for leave to appeal the high court's

order, which was dismissed by the high court. However, on 13 June 2023, leave to appeal was granted by this Court.

The issues of jurisdiction and *res judicata* were subsequently abandoned in this Court by Transnet. Therefore, the central issue to be determined by this Court was whether Mr Jeewan's claim against Transnet had prescribed within a period of three years from his alleged unfair dismissal on 14 May 2010 in terms of s 11(d) of the Prescription Act?

In its findings, the SCA held that in terms of s 12(1) of the Prescription Act subject to the provisions of ss (2), (3) and (4), prescription commenced to run as soon as the debt was due. According to the SCA, a debt was due in this sense when the creditor acquired a complete cause of action for the recovery of the debt, that is when the entire set of facts which the creditor had to prove in order to succeed with his or her claim against the debtor was in place or, in other words, when everything had happened which would have entitled the creditor to institute action and to pursue his or her claim. The SCA further held that Mr Jeewan was fully aware of the sequence of events that led to the holding of the disciplinary hearing against him on 14 and 17 May 2010. He was also fully aware of the fact that despite the hearing being postponed to 17 May 2010, he was effectively dismissed on 14 May 2010 when Transnet had signed the termination letter. He was consequently aware, on 14 May 2010, of the fact that his dismissal was unlawful. And, of course, he was aware of the identity of the debtor. All that, according to the SCA, pointed to the fact that his 'cause of action' for contractual damages arose on 14 May 2010. The fact that Mr Jeewan referred his unfair dismissal to the TBC for arbitration, as he was advised to do by Transnet, was an election that he made at the time. This, held the SCA, did not in any way, detract from the fact that his contractual debt became due on 14 May 2010 and as such was hit by the provisions of s 11(d) of the Prescription Act. From the date of dismissal, the running of prescription was triggered. It was only when the award was made against him that he decided to follow a different route that was, to sue for damages. By then it was already five years down the line and his claim had already prescribed. Nothing stopped him from approaching the high court sooner for purposes of pursuing his common law claim. As such, the appeal must accordingly fail.

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