

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/259/18

In the Matter Between:-

LERATO EVELYN MNTAMBO

PLAINTIFF

AND

**LESOTHO NATIONAL GENERAL INSURANCE
COMPANY Limited**

DEFENDANT

JUDGMENT

CORAM : **MOKHESI J**
DATE OF HEARING : **22ND AUGUST 2019**
DATE OF JUDGMENT : **12TH SEPTEMBER 2019**

CASE SUMMARY: *A claim made under Motor Insurance Order 1989 not honoured by the defendant- summons issued a day before the expiry of a two-year prescriptive period, but the same served upon the defendant after the expiry of the prescriptive period- the plaintiff arguing that the filing of summons decisive in interrupting prescription- Held that in terms of the common law of Lesotho what is decisive is the service of summons, and not its issuing; Consequently, the defence of prescription upheld with costs.*

ANNOTATIONS:

STATUTE: *Motor Vehicle Insurance Order No.26 of 1989*

CASES : *Sekhesa v Lesotho Insurance Company (VIV/T/274/91) [1994] LSCA 135 (01 August 1994)*

Lesotho Insurance Company v Sekhesa LAC (1995 – 1999) 26

PER MOKHESI J

[1] The plaintiff was involved in a motor vehicle accident. The vehicle she was travelling in overturned along the Main North 1 near Peka Ha-Makhaketsa in the district of Berea. The plaintiff was a fare-paying passenger in the said vehicle. As a result of the accident, the plaintiff sustained serious bodily injuries. The vehicle in which she was travelling was insured with the defendant insurance company. The said accident occurred on the 6th February 2016.

[2] It has to be mentioned that the factual matrix of this case is common cause as between the parties. On the 17th January 2018, the plaintiff through her attorney submitted a claim before the defendant for compensation in the amount of M60, 000.00, for the injuries sustained. The defendant did not honour the claim, hence after the effluxion of a sixty-day period in terms of which prescription is suspended, the plaintiff issued summons on the 05th April 2018, being a day before the end of a statutorily imposed two-year prescriptive period. Although the said summons were issued within time, they were however served upon the defendant by the Sheriff of this court after the end of the prescriptive period.

[3] To the plaintiff summons the defendant had raised two special pleas, viz,

a) That the plaintiff's claim had prescribed owing to the fact that the summons were served on the defendant beyond the statutorily mandated two years which ended on the 06th April 2019.

b) Lack of jurisdiction: The defendant alleges that this court lacks jurisdiction, as in terms of section 8(1) of the **Motor Vehicle Insurance Order No. 26 of 1989 (hereinafter "the Act")**, the maximum which can be claimed is M12, 000.00, thereby excluding the jurisdiction of this court to deal with this matter, the Magistrates' Court being the court which should deal with the matter instead.

[4] I revert to deal with the special pleas raised:

a) Whether the plaintiff's claim had prescribed.

It is the defendant's contention that the claim had prescribed as the summons were served on the defendant beyond the two year prescriptive period. On the one hand the plaintiff argue that she had filed her summons a day before the end of prescriptive period (on the 05th April 2018). The plaintiff contends that the delay in service was due to sheriff of this court as she had filed the summons on time. She contends that the consequences of failure by the sheriff to serve the summons within time should not be visited upon her. She relied on the High Court decision in ***Sekhesa v Lesotho Insurance Company (CIV/T/274/91) [1994] LSCA 135 (01st August 1994)***. It is worth noting that this decision was taken on appeal and the appeal succeeded. In essence the High Court decision had stated that the mere issuing and not service of summons had the effect of interrupting prescription, in terms of the Common law of Lesotho. However, the apex court held a contrary view. In issue in that decision was section 14(2) of the **Motor Vehicle Insurance Order of 1972**(hereinafter "**the 1972 Act**") which is identical to section 12(2) of the Act. Maqutu J (as he then was) had opined that in Lesotho there is no statutory provision "mandating cutoff point for the purpose of interrupting prescription." It has to be mentioned that even in the Act, there is no such a provision which states that service of summons will provide a cutoff date for interruption of prescription. However, in terms of the common law of Lesotho it is the service of summons that is decisive. This was authoritatively stated in the decision of ***Lesotho National Insurance Company v Sekhesa LAC (1995 – 1999) 26 at 30 B – D*** wherein Leon JA (as he then was) said:

"I should add that the learned Judge arrived at his conclusion with respect to the second special plea also because it was his view that under the common law of Lesotho it is the issue of the summons and not its service which is decisive. That approach was not supported by counsel for the respondent on appeal. In this regard the learned Judge relied upon Voet but that reliance does not rest upon any firm foundation. Indeed the full passage from Voet as well as the authorities referred to in the appellant's heads of argument show that the contrary is correct."

In *casu*, as already said the summons were served on the defendant beyond the prescriptive period of two years. As I understood Attorney Rampai, for the plaintiff, he seemed to argue along the lines (though not clearly) that this court should condone non-compliance with the prescriptive provisions of the Act. This court cannot accede to this request, as it does not have power to condone non-compliance with the Act. The remarks of Kheola J(as he then was) in ***Mamokhethi Mokhethi v Lesotho National Insurance Co.***

CIV/APN/57/86 (unreported) made in the context of the 1972 Act(which are equally applicable in the current context) dealing with prescribed third party claims, merit reproduction, and he said;

“The South African Act 56 of 1972 as amended provides for a Court relief of prescribed claim if a third party satisfies the court that by reason of special circumstances he could not reasonably be expected to comply with the said provision before the date on which the claim became prescribed....As Lesotho Motor Insurance Order has no such provision this court cannot give any relief on prescribed claim because that would amount to overruling an Act of Parliament....”

I entirely agree with the views expressed above.

It follows therefore that the special plea of prescription ought to be upheld. This conclusion makes it unnecessary to consider the second special plea.

[5] In the result the following order is made:

- a) The special plea of prescription is upheld, with costs.

M. MOKHESI J

FOR THE APPLICANT : ATTORNEY RAMPAI
FOR THE RESPONDENT : ATTORNEY TAKA