THE REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No.: 20689/2018

Before the Hon Madam Justice Slingers
Hearing: **13 May 2025**
Judgment Delivered: **10 June 2025**

In the matter between:

THE CITY OF CAPE TOWN	Plaintiff
and	
CELL C LIMITED	First Defendant
HAUWEI TECHNOLOGIES SOUTH AFRICA (PTY) LTD	Second Defendant
SAAB GRINTEK TECHNOLOGIES (PTY) LTD	Third Defendant
CORLINE 165 CC	Fourth Defendant

This judgment is handed down electronically by circulation to the parties' legal representatives' email addresses. The date of hand-down is deemed to be 10 June 2025.

JUDGMENT

SLINGERS J

Introduction

[1] The plaintiff instituted action proceedings against the defendants wherein it claimed an amount of R909 900.00 together with interest at ten percent per annum from service of the summons to date of final payment.

[2] It was the plaintiff's pleaded case that:

(i) during October 2015 the plaintiff granted the first defendant permission to access Cape Town Stadium **('the stadium')** in order to install infrastructure **('the installation')** for the purposes of servicing the first defendant's customers at the stadium. This permission was granted for the period 26 October 2015 to 11 December 2015; [1]

(ii) the first defendant appointed the second defendant as its contractor to do the installation. In turn, the second defendant appointed the third defendant who appointed the fourth defendant;[2]

(iii) the second, third and fourth defendants all worked on the installation at gridline 50 on level 6 of the stadium[3];

(iv) on 18 November 2015 the plaintiff discovered extensive damage to the external façade of the stadium which was caused by a metal panel which had dislodged from gridline 50 on level 6 of the stadium and which fell on or through the façade, damaging same[4];

(v) at all material times it was the first defendant's duty to ensure that the installation was done without any harm or damage to the stadium[5]; and

(vi) inasmuch as the damage was caused by the second, alternatively, the third, alternatively the fourth defendant's action, it remained the duty of the

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[1] Paragraph 7 of the amended particulars of claim, page 6
[2] Paragraph 8 of the amended particulars of claim, page 6
[3] Paragraph 9 of the amended particulars of claim, page 6
[4] Paragraph 10 of the amended particulars of claim, pages 6-7
[5] Paragraph 12 of the amended particulars of claim, page 7

first defendant to ensure that no damage was done to the stadium and it could not rid itself of this duty by appointing a contractor.[6]

[3] The plaintiff's main claim was against the first defendant with an alternative claim against the second, alternatively the third, alternatively the fourth defendant. The alternative claims against the second, alternatively the third, alternatively the fourth defendant were brought in the event that the court found that they were independent contractors and that the first defendant could not be held liable for any of their actions.[7]

[4] The first and second defendants **('the defendants')** invoked a special plea of prescription. They averred that the cause of action arose on 18 November 2015 and that the summons instituting the proceedings were served on them after 18 November 2015. Consequently, the plaintiff's claim against them prescribed before the service of summons in terms of section 11 of the Prescription Act, Act 68 of 1969.

[5] Section 11 of the Prescription Act provides that:

'11 Periods of prescription of debts

The periods of prescription of debts shall be the following:

(a) Thirty years in respect of –

(i) any debt secured by mortgage bond;

(ii) any judgment debt;

(iii) any debt in respect of any taxation imposed or levied by or under any law;

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[6] Paragraph 13 of the amended particulars of claim, page 7
[7] Paragraph 15 of the amended particulars of claim, page 8

(iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;

(b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);

(c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);

(d) save where an Act of parliament provides otherwise, three years in respect of any other debt.'

[6] The plaintiff's claim would prescribe within a period of three years as it falls within the ambit of section 11(d) of the Prescription Act.

[7] Aside from invoking the plea of prescription, the second defendant gave notice of its intention to seek a punitive costs order against the plaintiff.

[8] In replicating to the defendants' special plea, the plaintiff pleaded as follows:

> *'The Plaintiff denies that its cause of action arose on 18 November 2015 or that the debt in question fell due by then.*
>
> *In amplification of the aforesaid denial the Plaintiff pleads that although it discovered that the façade was damaged on 18 November 2015, it did not know who was responsible for causing the damages as various entities worked and cleaned at Gridline 50 on Level 6 of the stadium in November 2015.*
>
> *These various entities all blamed one another for the damages and advanced different theories as to how it occurred and as such it was impossible to ascertain the identity of the Plaintiff's debtor and the facts*

from which the debt arises without a thorough investigation and, in any event, before 21 November 2015.'

[9] The parties agreed that the question of prescription, as raised in the pleadings, be dealt with separately to the merits of the plaintiff's claim. Pursuant to this agreement the special plea of prescription was set down for adjudication on 13 May 2025.

The evidence

[10] The defendants accepted that they bore the duty to begin and the onus.

[11] In his opening statement counsel for the first defendant submitted that the plaintiff sought to impose strict liability on it in terms of its pleaded case. This rendered the actual identity of the defendant / entity who caused the damage irrelevant. Furthermore, the first defendant submitted that section 12(3) of the Prescription Act found no application. As the plaintiff discovered the loss on 18 November 2015 and served its summons on 21 November 2018, the plaintiff's claim against it had prescribed.

[12] Section 12(3) of the Prescription Act provides that:

'12(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.'

[13] The first defendant closed its case after its opening statement and without calling any witnesses.

[14] In his opening statement the legal representative for the second defendant submitted that there were no grounds on which the plaintiff could succeed. It then proceeded to call Mr Oliver Masiyakurima **('Masiyakurima').** He testified that he was employed with the second defendant since December 2014 as an ICS service engineer and that he was responsible for the network provision.

[15] He testified that the second defendant was responsible for the full end-to-end network installation and that it was contracted by the first defendant. Masiyakurima testified that the first defendant was the user and that the second defendant was responsible for the implementation.

[16] Masiyakurima confirmed that he was employed with the second defendant during 2015 in the same position as that which he currently occupies. Masiyakurima confirmed that the plaintiff appointed the first defendant for works to be done at the stadium and in turn the first defendant appointed the second defendant.

[17] The second defendant was responsible for the site survey, installation and the hand over. The second defendant does not do the physical work but would appoint another contractor to do the physical work which it would supervise and monitor.

[18] On 30 September 2015, Herman Jacobs **('Jacobs')** of the first defendant contacted Kevin Wood **('Wood')** of the plaintiff in respect of obtaining access to the stadium to do the final survey. Wood advised Jacobs that the requisite safety requirements had to be complied with before access to the roof could be granted. Wood referred Jacobs to Danie Erasmus, the stadium safety officer who would give him more details of the requisite safety requirements.

[19] Masiyakurima confirmed that when they attended at the stadium security would accompany the first defendant's employees through the site and when the attended at level 6 of the stadium. He also testified that there is a register which must be completed upon entry at the stadium. The details of all persons who were granted entry to the stadium were recorded in the register.

[20] Masiyakurima confirmed knowledge of a project plan which set out important aspects such as details of the project, deadlines and milestones. Masiyakurima confirmed that he was responsible for the design and to ensure that what was reflected on paper was the same product which was installed. He also testified that all the teams relied on him in respect of what to do and when to do it.

[21] Masiyakurima was on site when he received a call on 18 November 2015. He immediately went gridline 50 on level 6 at the stadium where he encountered a big white man who was very upset as a result of the damage he discovered. As Masiyakurima occupied a junior position, he called his manager who notified the first defendant to send a representative to attend on the scene. Masiyakurima testified that there were representatives from the plaintiff, the second defendant and other teams at the scene, including Bidvest and Corline.

[22] Masiyakurima was taken to a note dated 19 November 2015 which was penned by Shiraz Moosa in his capacity as head of Safety and Security, Cape Town Stadium. This note recorded that it was alleged that the first defendant was the only contractor working at gridline 50 on level 6 on 18 November 2015 and that it appeared that a metal panel from level 6 may have caused the damage to the façade; that this panel was removed at some stage by the first defendant; and that it may not have been secured sufficiently.

[23] Masiyakurima compiled a report which recorded that on 18 November 2015 the stadium management stated that the damage was caused by the second defendant contractors as they worked on location. The report contained the second defendant's denial that they were responsible for the damage. Masiyakurima's report concluded that there was no conclusive proof in respect of who was responsible for the damage.

[24] After presenting the evidence of Masiyakurima, the second defendant closed its case.

[25] Thereafter, the plaintiff called John Wood **('Wood')** who testified that he was employed by the plaintiff and that he was so employed during 2015 when he was responsible for internal infrastructure. Wood confirmed that the plaintiff gave the first defendant permission to enter the stadium.

[26] Wood testified that he was aware that there was a theory that a cherry picker under the control of Bidvest was responsible for the damage[8]. Under cross examination by counsel for the first defendant, Wood conceded that it was never his view that Bidvest and the cherry picker was responsible for the damage caused and the consequent loss.

[27] Wood unconvincingly testified that he would not know whether the plaintiff investigates the loss of an asset in writing or only does so verbally. He went on to testify that he cannot recall seeing anything or any report which recorded that Bidvest and a cherry picker were responsible for the damage caused. He testified that as far as he knew, no one placed any credibility in the theory that Bidvest and the cherry picker caused the damage.

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[8] The cherry picker was apparently used by Bidvest to clean the stadium.

[28] Wood conceded that there one of four entities which could be liable for the damage and that he held a meeting with representatives of all four entities on the 18th of November 2015.

[29] Wood testified that he had not seen anything which changed between 18 November 2015 and 21 November 2015 and that he was not sure that anything had changed during this time.

[30] Wood conceded that it would be easy to determine which party was at the stadium on a particular day. Although it was a reasonable question to ask which contractor removed the panel, Wood did not pose this question. Similarly, it was a reasonable question to ask which contractor replaced the panel but he did not do so. Wood also failed to ask who was responsible for supervising the work on level 6.

[31] When it was put to Wood that any suspicion he had would have been alleviated by asking the above three questions, he did not deny it but responded with a *'perhaps'*. He further testified that Mr Van Rensburg would be the person who dealt with those kind of issues.

[32] When it was put to Wood that he wanted conclusive proof of who was to blame for the damage before instituting the claim, he acknowledged that the plaintiff had wanted to know who was responsible for the damage.

[33] The next witness to testify was Andre Van Greunen **('Van Greunen')** who was the plaintiff's attorney at the time of instituting the action proceedings.

[34] Van Greunen testified that he authored the letter addressed to the Sheriff of the High Court, Bellville **('the Sheriff')** dated 9 November 2018. This letter requested that the summons with the particulars of claim be served by no later

than 18 November 2018[9]. Van Greunen testified that he made this request out of an abundance of caution as he knew that the plaintiff discovered the damage on the 18th of November 2015 and he wanted to prevent any possible argument on prescription. He emphasized that the plaintiff did not know who caused the damages on 18 November 2015.

[35] On 7 January 2019 Van Greunen directed further correspondence to the Sheriff because he failed to comply with the request to serve the summons with the particulars of claim on the first and second defendants timeously.[10] This letter stated *inter alia* the following:

'2. *You were informed in writing that service must be effected on or before 18 November 2018 as there may be issues of prescription should it be served later*' and

'6. *This letter serves to inform you that should our client's claim be dismissed on the basis that it has prescribed, our client will hold your office responsible for any losses suffered as a result thereof. Please be advised that our client is claiming the amount of R909, 900.00 from the defendants. That is also the amount that our client will seek to recover from your office should it be required. If you are insured for claims of these nature, we would suggest that you advise your insurers accordingly.*'

[36] Van Greunen testified that they had consulted with people who may be able to shed light on the issues but that no-one knew who caused the damages. However, it was unclear whether the second and third defendants were appointed to the project as sub-contractors to the first defendant or as independent contractors.

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[9] Page 58 of the plaintiff's bundle
[10] Page 61 of the plaintiff's bundle

[37] In an email dated 5 November 2018, Van Greunen inquired from Stefanus Landsberg of the second defendant about the capacity in which the third defendant was appointed to the stadium project and whether this was in the capacity of a sub-contractor.

[38] This inquiry was made almost three years after the damage was discovered. During the presentation of the plaintiff's case there was no explanation why this inquiry was not done sooner.

[39] It was put to Van Greunen that the meeting held on the day of the incident resulted in the plaintiff having sufficient information to institute its action. In response, Van Greunen testified that had no knowledge of the identities of the persons with whom Wood met. Van Greunen was unable to comment and/or respond when it was put to him that on 18 November 2015 the plaintiff had sufficient information and/facts to institute proceedings against the defendants. Alternatively, it could obtain sufficient knowledge by making a simple inquiry of asking *who do you work for.*

[40] It was also put to Van Greunen that in accordance with section 12(3) of the Prescription Act, prescription starts to run when a plaintiff has sufficient knowledge to commence proceedings, it need not have perfect knowledge necessary to establish its case.

[41] The plaintiff closed its case after Wood's testimony.

The parties' arguments

[42] The first defendant argued that the plaintiff's claim against it was a contractual one in terms whereof the first defendant accepted a species of strict liability for the conduct of the second to the fourth defendants.

[43] The first defendant argued that on the plaintiff's pleaded case it was possessed of sufficient facts to determine the identity of the debtor in relation to the sum claimed and that it was irrelevant how the loss was caused as the first defendant would irrespective thereof be liable, therefore.

[44] Further, the commencement of the running of prescription is not delayed until the claimant has knowledge of all the facts necessary to establish its case. On the contrary, the running of prescription commences when a claimant has all the facts necessary to establish the cause of action.

[45] The second defendant argued that this was a case of the plaintiff seeking all the facts, evidence and conclusions before it issued summons. However, this is not required by law which requires only the minimum sufficient facts in law. These facts were within the plaintiff's knowledge on 18 November 2015 as it knew everything it needed to know to issue summons. Therefore, prescription started running on 18 November 2015.

[46] The second defendant argued that the plaintiff's case did not revolve around the identity of the wrongdoer

[47] Furthermore, it was argued that if the plaintiff asked three questions, namely (i)who did (ii)what (iii)when, it would have obtained the requisite knowledge on 18 November 2015 needed to institute proceedings. In other words, had the plaintiff acted reasonable, it would have obtained the information it required to issue summons. The plaintiff failed to act reasonably to acquire the information it thought necessary to institute proceedings.

[48] In the circumstances, the second defendant argued that the plaintiff's claim against it had prescribed.

[49] The plaintiff averred that prescription did not begin to run by virtue of section 12(3) and that prescription did not start to run on 18 November 2015 as it did not know which party caused the damage at that stage.

The law

[50] It is common cause that the period of prescription for the amount claimed by the plaintiff is three years.

[51] Prescription begins to run against a party when it has the minimum facts necessary to institute action. Consequently, the running of prescription is not postponed until such time that a claimant learns of the full extent of its legal right nor until such time that a claimant has all the evidence which it requires to comfortably establish its case.[11]

[52] This court has cited with approval the proposition that time starts to run against a creditor when it has 'the minimum facts that are necessary to institute action' and that the running of prescription is not postponed until the creditor 'becomes aware of the full extent of its legal rights'.

[53] It has been held that a debt is due when the entire set of facts which the creditor must prove in order to succeed with his or her claim against the debtor is in place or, in other words, when everything has happened which would entitle the creditor to institute action and to pursue his or her claim. This does not include the legal conclusions which a litigant seeks to draw from the facts.[12]

[54] Prescription would start running against a party when there is either knowledge or awareness of the facts from which the debt arises as well as the identity of the

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[11] *Minister of Finance and Others v Gore NO* 2007 (1) SA 111 (SCA) at para [17]; See also *President of the Republic of South Africa and Another v Tembani and Others* 2025 (2) SA 371 (CC) at para [86]

[12] *Truter and another v Deysel* 2006 (4) SA 168 (SCA) at paras [16] and [17]; *Le Roux and Another v Johannes G Coetzee & Seuns and Another*

debtor. A party would be deemed to have knowledge of these facts if he/she could have acquired it by exercising reasonable care.[13]

[55] Whether or not it could be said that a party failed to exercise reasonable care would depend on a number of factors and consideration of all the circumstances relevant to the claimant's conduct.[14]

[56] The inquiry into whether a claimant may be deemed to have acquired the requisite knowledge and whether he/she exercised reasonable care is an objective, and not a subjective inquiry. Therefore, the claimant's conduct is tested by weighing it against the steps which a reasonable person in his or her position would have taken to acquire knowledge the requisite minimum facts to enable him/her to institute his/her claim timeously.[15]

Discussion

(i) The plaintiff's case against the first defendant

[57] I deal firstly with the plaintiff's case against the first defendant.

[58] Counsel for the first defendant submitted that the plaintiff's pleaded case against the first defendant is based on strict liability akin to vicarious liability. This is an accurate description of the plaintiff's pleaded case against the first defendant.

[59] The facts which are set out in the plaintiff's particulars of claim are the same facts which he had at his disposal on 18 November 2015. Thus, on 18 November 2015, the plaintiff had the minimum facts it needed to institute proceedings against the first defendant.

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[13] *Le Roux and Another v Johannes G Coetzee & Seuns and Another* 2024 (4) SA 1 (CC)
[14] *Brand v Williams* 1988 (3) SA 908 (C) quoted with approval in *Le Roux and Another v Johannes G Coetzee & Seuns and Another*
[15] *Leketi v Tladi NO* 2010 JDR 0329 (SCA)

[60] Therefore, prescription in respect of the plaintiff's claim against the first defendant started running on 18 November 2015. Consequently, as the summons instituting proceedings was served on the first defendant after 18 November 2018 being three years after the claim arose, the plaintiff's claim against the first defendant has prescribed.

(ii) The plaintiff's case against the second defendant

[61] I turn now to the plaintiff's claim against the second defendant.

[62] The court is told that the plaintiff did not know the identity of the party responsible for the damage to gridline 50 on level 6 on 18 November 2015. The court is not told when the plaintiff discovered the identity of the party responsible for the damage to gridline 50 on level 6.

[63] The evidence has shown that the plaintiff could have ascertained the minimum facts it needed to institute proceedings by directing three simple questions to the parties present at the meeting held on 18 November 2015 on the site. The plaintiff had simply to ask, '*who did what when*'. There was no reasonable explanation for the failure to do so. Similarly, there was no explanation why the plaintiff, through its attorney, only made inquiries in respect of the capacity in which the third defendant was appointed to the installation project, almost three years after the damage was discovered.

[64] Therefore, it cannot be said that the plaintiff exercised reasonable care. Had the plaintiff exercised reasonable care, it could have acquired the minimum facts it needed to institute proceedings.

[65] Consequently, the plaintiff is deemed to have this knowledge on 18 November 2015. Therefore, the summons instituting the plaintiff's claim had to be served

on the second plaintiff by 18 November 2018. It was not. Consequently, the plaintiff's claim against the second defendant has prescribed.

[66] Based on the papers filed on record and the evidence presented, it is evident that nothing changed in the plaintiff's knowledge pertaining to the incident from 18 November 2015 and 21 November 2015.

[67] The plaintiff instituted proceedings against the defendants with the same total of knowledge it had on 18 November 2015. This is conclusive of the fact that the plaintiff was aware of / had knowledge of the facts it needed to institute its claim against the defendants were within its knowledge on 18 November 2015. Therefore, prescription started to run on 18 November 2015, which meant that the plaintiff's summons had to be served on the defendants by 18 November 2018.

[68] It is clear from the plaintiff's pleaded case that it still does not know which defendant was responsible for causing the damage. Thus, it instituted its claim in the form of a main claim against the first defendant with alternative claims against the other defendants. The lack of knowledge pertaining to the identity of the actual wrongdoer who was responsible for the damage was, therefore, clearly not a requisite factor necessary for the institution of the plaintiff's claim.

[69] It is clear from Van Greunen's evidence and his correspondence directed to the Sheriff that the plaintiff knew that the summons had to be served by 18 November 2018, failing which its claim would prescribe. His evidence that he wanted the sheriff to serve the summons before the 18th of November 2018 out of abundance of caution and to prevent the invocation of prescription was unconvincing and improbable.

[70] Notwithstanding that the plaintiff knew that its claim had prescribed and the warning by the second plaintiff, it proceeded with instituting its claim against the second defendant.

[71] In the circumstances, the second defendant's pray for punitive costs are reasonable.

Orders

[72] Therefore, I make the following orders:

(i) the first defendant's special plea of prescription is upheld as the plaintiff's claim against the first defendant has prescribed;

(ii) the plaintiff's claim against the first defendant is dismissed with costs, which cost shall be on scale B;

(iii) the second defendant's special plea of prescription is upheld as the plaintiff's claim against the second defendant has prescribed;

(iv) the plaintiff's claim against the second defendant is dismissed with costs, which costs shall be on an attorney – client scale on scale B.

[redacted]

SLINGERS, J

10.6.2025