

Short notes on:

## **SERVICE OF A LETTER OF DEMAND, DOES IT INTERRUPT PRESCRIPTION?**

### ***Introduction***

Prescription of a debt can be described as “old debt” in which creditors may not institute legal proceedings to collect monies owed to them, by law. The Prescription Act provides that the period of prescription is a period 3 years in respect of an ordinary debt. In certain instances, prescription may be interrupted in which effect the prescription period may be extended.

This article aims to explore whether service of a Letter of Demand may interrupt prescription through the High Court judgment *Seleka and Others v Min of Police and Others*<sup>1</sup>.

### ***Legal issue***

In the High Court judgment, *Seleka and Others v Min of Police and Others*, the court had to decide whether a Letter of Demand constitutes process as per section 15(1) of the Prescription Act 68 of 1969 (the “Prescription Act”). Alternatively, whether the said Letter of Demand interrupted prescription as is contemplated in sections 15(1) and 15(2) of the Prescription Act.

### ***Rule of law***

Section 15(1) of the Prescription Act provides that the running of prescription shall be interrupted by service on the debtor of any process whereby the creditor claims payment of the debt<sup>2</sup>.

The term process is, however, not defined in the Prescription Act and for that reason we rely on section 15(6) for guidance. Section 15(6) provides that process can be seen to include a petition, a rule nisi, a pleading in convention, a third-party notice referred to in any of the rules of the court and any document in which legal proceedings are commenced<sup>3</sup>. The aforementioned documents are described to be documents whereby legal proceedings is commenced.

### ***Application of the law***

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<sup>1</sup> Seleka and Others v Minister of Police and Others 2015 (4) SA 376 (LP)

<sup>2</sup> Prescription Act No. 68 of 1969.

<sup>3</sup> Prescription Act No. 68 of 1969.

The court held that a Letter of Demand does not fall within the ambit of being a document in which legal proceedings are commenced. In reaching its judgement, the court made a remark that certain documents fall within the ambit of “process” which do not commence legal proceedings and accordingly, fall outside the definition<sup>4</sup>.

The court, in reaching its ratio decidendi, referred to and made comparative analysis to a decision in the case of *Santam Insurance Co. Ltd v Vilakazi* in which section 6(1) of the former Prescription Act was referred to where the court held that “the service referred to in section 6(1) must be service whereby action is instituted as a step in the enforcement of a claim or right.”<sup>5</sup> The underlying reason why such service interrupts prescription is that the creditor has formally involved his debtor in court proceedings for the enforcement of his claim.

## **Conclusion**

The court held that the Letter of Demand was served as such pending the institution of legal proceedings and cannot be construed as having commenced legal proceedings. In essence, a Letter of Demand constitutes legal process which does not commence legal proceedings and therefore fall outside the ambit of process as defined by section 15(1) of the Prescription Act. The court further held that a Letter of Demand is merely informative and is not one in which a creditor purports to enforce the rights co-relative to the obligations created.<sup>6</sup>

In conclusion, a Letter of Demand does not have the effect of interrupting Prescription. Contact SchoemanLaw for all your litigious needs.

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<sup>4</sup> Seleka and Others v Minister of Police and Others 2015 (4) SA 376 (LP)

<sup>5</sup> Seleka and Others v Minister of Police and Others 2015 (4) SA 376 (LP)

<sup>6</sup> Seleka and Others v Minister of Police and Others 2015 (4) SA 376 (LP)