

Court case on prescription of accrual claim

The applicant (R) is the executor in the deceased estate of the late MS, who were married out of community of property with inclusion of the accrual system to the respondent (HS). The couple were in the process of separation, but not divorced yet, when MS passed away. R requested full particulars from HS about his assets and their value to determine whether there would be an accrual claim in favour of the deceased estate of MS. HS supplied information through his attorneys to R, after which R made further requests. This process carried on for more than six years. R then launched the application to compel HS to supply more and better information. HS argued that the claim prescribed three years (alternatively six years) after R was supplied with the information, alternatively that "...what the applicant in truth seeks are orders amounting to pre-litigation discovery and a response to pre-litigation interrogatories which include "explanations" from third parties who are not joined in these proceedings as well as the creation of documents."

The court (Cloete J) held that the claim did indeed prescribe as prescription starts to run from the date on which the debtor and the existence of the claim is known to the creditor. Uncertainty as to the quantum of the claim does not stop prescription from running. The court also held that R's repeated requests for further and better information did indeed enter into the territory of pre-litigation discovery. For prescription to be stopped in these circumstances the executor would have been required to institute action under section 3 of the [Matrimonial Property Act, 88 of 1984 \(MPA\)](#).

Comment

Practitioners should ensure that they are aware of the requirements for the prescription of a claim in favour of the estate and guard against allowing the defence of prescription becoming available to the debtor. The effect of this judgement is that an executor in similar circumstances to R will have to take a decision timeously to institute action under section 3 (read with section 7) of the MPA if the information supplied by the surviving spouse is not satisfactory. In practice this will obviously only be important where the surviving spouse is not the heir of the bulk of the estate, such as where the parties to the marriage were estranged at the time of the one spouse's death.