DON’T LOSE YOUR CLAIM TO PRESCRIPTION - KNOW THE LAW!

“Ignorantia iuris nocet” (old Roman proverb meaning "Not knowing the law is harmful")

Most of us know how important it is to sue our debtors well before prescription permanently takes away our right to claim.

But what if you did nothing until it was too late because you didn’t even know you had a claim in the first place? As a recent Constitutional Court illustrates, the answer depends on what the nature of your ignorance in this regard is.

A damages claim for unlawful arrest

An illiterate resident of a rural area was arrested and detained by police for four or five days.

He only became aware that his arrest had been unlawful years later when discussing the matter with his neighbour (an attorney). When he then sued the Minister of Police for R350,000 in damages, the Minister raised the defence of prescription.

The Court held that in this particular case the claim had indeed prescribed. Central to this decision was the question of the whether the claimant’s ignorance of his right to claim was factual or legal.

If your ignorance is factual…

Prescription only starts to run when you have “knowledge of the identity of the debtor and of the facts from which the debt arises”.

So ignorance of the facts underlying your claim will delay prescription until you become aware of them. Just note that you can’t act unreasonably here – you are “deemed to have such knowledge if [you] could have acquired it by exercising reasonable care.”

But what about ignorance of legal consequences?

The claimant here did not, he said, know that he had a legal remedy against the Minister until it was too late. He didn’t know the law around the 48 hour limit on detention. He was “innocent, ignorant and uninformed about the legal conclusions or consequences of facts” in his possession.

That ignorance - that the police’s action was “wrongful and actionable” - was, held the Court, not ignorance of a “fact” but ignorance of a “legal conclusion”. And since ignorance of the law doesn’t stop prescription running, his claim had prescribed.

Your remedy

That sounds like hard law and perhaps it is in an unfortunate case such as this, but the reality is that such time limits are necessary to bring “certainty and stability to social and legal affairs”. The highest Court in the land has spoken – you can’t hide behind ignorance of your legal rights when it comes to prescription.

There’s only one remedy – don’t delay in getting legal advice!