

PRESCRIPTION

Prescription Act 68 of 1969, as amended in South Africa to November 1979  

Summary: This Act ([RSA GG 2421](#)) governs prescription (time limits on instituting legal proceedings). It replaced the Prescription Proclamation 13 of 1943. (According to *O'Linn v Minister of Agriculture, Water and Forestry & Others* 2008 (2) NR 792 (HC) at 797F-G, the South African *Prescription Act 18 of 1943* was never applicable to Namibia or South West Africa.)

Applicability to SWA: Section 21 states “This Act and any amendment thereof which may be made from time to time, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968).”

Transfer to SWA: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended, by virtue of its subject matter. (Note that it is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* ([RSA GG 17129](#).) There was one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Prescription Amendment Act 11 of 1984* ([RSA GG 9087](#)) – which was not made expressly applicable to SWA.

Amendments: The following pre-independence amendments in South Africa were applicable to SWA:

- *General Law Amendment Act 62 of 1973* ([RSA GG 3947](#))
- *General Law Amendment Act 57 of 1975* ([RSA GG 4760](#)).

Terminology in the Act was amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)) amends section 3.

Regulations: The Act makes no provision for regulations.

Cases:

H Charney & Co (Pty) Ltd v Segall & Matheson Properties 1995 NR 148 (HC) (sections 11(d) and 12(1))

Seaflower Whitefish Corporation v Namibia Ports Authority 1998 NR 316 (HC) (section 12(1) and (3))
Section 12(3) was amended in South Africa prior to Namibian independence by the *Prescription Amendment Act 11 of 1984* ([RSA GG 9087](#)) which was not made expressly applicable to South Africa. This amendment removed the phrase “which does not arise from contract” from section 12(3). This amendment does not appear to have been applicable to South West Africa, but it should be noted that this case assumes without discussion that section 12(3) reads with the amendment in question, stating at 322B-E: “The relevant section of the Prescription Act 68 of 1969, is s 12 and the relevant portions of that section are as follows:

‘(1) Subject to the provisions of ss (2) and (3), prescription shall commence to run as soon as the debt is due.

...

(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.’

Seaflower Whitefish Corporation Ltd v Namibian Ports Authority 2000 NR 57 (HC) (sections 11 and 12)

Bank Windhoek Ltd v Kessler 2001 NR 234 (HC) (section 13(1)(b))

Andreas v La Cock & Another 2006 (2) NR 472 (HC) (section 11)

Karuaihe-Martin v Telecom Namibia NLLP 2002 (2) 267 NLC (section 15)

South Bakels (Pty) Ltd & Another v Quality Products & Another 2008 (2) NR 419 (HC)

O'Linn v Minister of Agriculture, Water and Forestry & Others 2008 (2) NR 792 (HC) (sections 6 and 19); *Minister of Agriculture, Water and Forestry v O'Linn* 2008 (2) NR 792 (SC)

Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC) at 731F-732H

Basfour 2482 (Pty) Ltd v Atlantic Meat Market (Pty) Ltd & Another 2011 (1) NR 164 (HC)

Merlus Seafood Processors (Pty) Ltd v Minister of Finance 2013 (1) NR 42 (HC)(section 10)

Wellman v Hollard Insurance Co of Namibia Ltd 2013 (2) NR 568 (HC) (application of section 12(3) to agent and principal; discussed in Clever Mapaure, "Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions", *UNAM Law Review*, Volume 1, Issue 2, 2013, available at <http://unamlawreview.info>)

Section 12(3) was amended in South Africa prior to Namibian independence by the *Prescription Amendment Act 11 of 1984 (RSA GG 9087)* which was not made expressly applicable to South West Africa. This amendment removed the phrase "which does not arise from contract" from section 12(3). This amendment does not appear to have been applicable to South West Africa, but it should be noted that the *Wellman* case applies section 12(3) to a contractual debt (see paragraph 78); thus, although the issue is not discussed, the case appears to assume that section 12(3) applies as amended by *Act 11 of 1984*.

Namibia Development Corporation v Mwangingi & Others 2013 (3) NR 737 (LC) (Act applies to labour-related claims arising under Labour Act 6 of 1992 or Labour Act 11 of 2007)

Ongopolo Mining Ltd v Uris Safari Lodge (Pty) Ltd & Others 2014 (1) NR 290 (HC) (section 10; meaning of "debt")

Lisse v Minister of Health & Social Services 2015 (2) NR 381 (SC) (interruption of prescription by notice of motion in judicial review proceedings relating to the damages claim)

Municipal Council of Windhoek v Telecom Namibia Ltd 2015 (3) NR 629 (SC) (section 11(b): "the State" includes a local authority)

Shambo v Amukugo 2016 (1) NR 44 (HC) (interruption of running of prescription under sections 14 and 15)

Tjamuaha & Another v Master of the High Court & Others 2016 (1) NR 186 (HC) (vindicatory claim is not a "debt" for purposes of Act).

Hartzenberg v Standard Bank Namibia 2016 (2) NR 307 (SC) (an amendment to a claim which is proposed after the prescription period cannot be allowed where it claims new debts not arising from the same material facts relied upon in the original claim)

Okorusu Flurospar (Pty) Ltd v Tanaka Trading CC & Another 2016 (2) NR 486 (HC) (an amendment which does not introduce a new cause of action but merely expands on the initial plea may be made after the prescription period has run)

Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC)

Section 12(3) was amended in South Africa prior to Namibian independence by the *Prescription Amendment Act 11 of 1984 (RSA GG 9087)* which was not made expressly applicable to South West Africa. This amendment removed the phrase "which does not arise from contract" from section 12(3). This amendment does not appear to have been applicable to South West Africa, but it should be noted that the *van Straten* case case assumes (also without discussion) that section 12(3) as it applies in Namibia was *not* amended by the *Prescription Amendment Act 11 of 1984*. The Court states at paragraph 127 (footnotes omitted):

Section 12(3) of the Prescription Act 68 of 1969 at the time provided that claims arising from contract arose when the debtor fails to perform contractual obligations, with knowledge of the breach being irrelevant. On the other hand, in respect of debts which do not arise under contract, prescription only would begin to run when the creditor has knowledge of both the identity of the debtor and the facts from which the debt arises, provided that the creditor is deemed to have that knowledge by exercising reasonable care. [...] [T]his distinction was abolished by the legislature in South Africa in 1984 by amending s 12(3) of that Act. [...] Knowledge thus became a requisite for the commencement of prescription in contractual claims in South Africa after that amendment to s 12(3) in 1984. But the prior distinction in s 12(3) of the Prescription Act remains applicable in its unamended form in Namibia despite its removal more than 30 years ago in South Africa.

Louw v Strauss 2017 (3) NR 808 (HC) (meaning of "debt" in section 11(d); acquisitive prescription also

discussed)

Arangies v Neves & Others 2019 (3) NR (SC) (section 65 upheld against constitutional challenge under article 10)

Kruger v Minister of Finance of the Republic of Namibia & Others 2020 (4) NR 913 (HC) (paras 107-117: the 30-year prescription period in section 11(a)(iii) operates in favour of the State but not in favour of the taxpayer)

Council of the Itireleng Village Community v Madi 2017 (4) NR 1127 (SC) (“debt” for purposes of the Act does not include the setting aside of disciplinary action by a voluntary association, even though damages arising from this could conceivably constitute a debt)

Shiimi v City of Windhoek Municipality Council 2018 (1) NR 292 (HC) (section 12)

Tjmuaaha & Another v Master of the High Court & Others 2018 (3) NR 605 (SC) (co-ownership of property by spouses married in community of property is a personal right and not a real right for a surviving spouse, meaning that the three-year prescription period in the Act is applicable)

Negonga v Nampost Ltd 2018 (3) NR 704 (HC) (section 12(3); prescription begins to run in respect of customer of bank on date of demand for deposited funds and not on date of deposit of those funds; what constitutes “reasonable care” measured by reasonable person with the creditor’s characteristics)

Mbelle Panel Beaters & Transport CC v Willemse 2018 (3) NR 745 (NLD) (sections 11(d), 12(1) and 15(1); letter of demand does not constitute legal process for purposes of section 15(1))

Nottingham Inc v Rockview Investment Number Seventy-one (Pty) Ltd & a similar case 2019 (1) NR 8 (HC) (section 11: preprescription period starts running when arbitration award concerning debt was made an order of court, constituting a new cause of action, and not when original debt became due); overturned on appeal on other grounds in *Rockview Investment Number Seventy One CC v Nottingham Incorporated* (SA 53-2018) [2020] NASC (11 August 2020).

Commentary: C Mapaire, “A Comparative Discussion of the Approach to Characterisation in *Laconian Maritime Enterprises Ltd v Agromar Lines Ltd* 1986 (3) SA 509 (D), *Laurens No v Von Hohne* 1993 (2) SA 104 (W) and *Society of Lloyds v Price; Society of Lloyds v Lee* 2005 (3) SA 548 (T)”, *UNAM Students Law Review*, Volume 1, No 1, 2013, available [here](#).

Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970, as amended in South Africa to November 1979

Summary: This Act ([RSA GG 2902](#)) prescribes time limits for legal proceedings in respect of certain debts against provincial administrations, local authorities and the Administration of the territory of South West Africa.

Applicability to SWA: Section 7 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. There were no amendments to the Act in South Africa before or after the date of transfer.

Amendments: The Limitation of Legal Proceedings Act 25 of 1985 ([OG 5145](#)) amends section 1.

Section 95(1) of the Local Authorities Act 23 of 1992 ([GG 470](#)) repeals section 9, insofar as it related to the Municipal Ordinance 13 of 1963, which is repealed by Act 23 of 1992.

Regulations: The Act makes no provision for regulations.

Cases: *Sebatane & Another v Mutumba & Others* 2013 (1) NR 284 (HC) (section 2(1)(a) upheld against constitutional challenge); *Shiimi v City of Windhoek Municipality Council* 2018 (1) NR 292 (HC) (section 2(1)(a) and (c), (2)(b)).