

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, BHISHO)**

Case No:

35/14

In the matter between:

**CRUCIAL TRADE 149 (PTY) LTD t/a
MEYERS VEHICLE HIRE**

Plaintiff

And

**THE MEC, DEPARTMENT OF LOCAL GOVERNMENT
AND TRADITIONAL AFFAIRS**

Defendant

JUDGMENT

BESHE J:

[1] Plaintiff instituted a claim against the defendant for payment of an a sum of R314 597.18 in respect of vehicle hire services rendered by the plaintiff to the defendant which plaintiff alleged was at the defendant's special instance and request during the period 2010 to 2013. (Rental Agreement).

[2] In order to resolve the dispute between them in this matter, the parties agreed to a stated case as contemplated in *Rule 33 of the Uniform Rules* of this court.

[3] The facts agreed upon for purposes of the stated case appear from a joint minute / statement signed on behalf of both parties which reads thus:

AGREED FACTS:

6. The Plaintiff has provided / hired its vehicles to the Defendant over a period of many years as and when requested by the Defendant and/or the Department's employees.
7. The normal procedure entailed the following:
 - 7.1 A telephonic request from an official of the Defendant for a quotation in respect of the Defendant's specific travel requirements;
 - 7.2 A brief discussion about the applicable vehicle hire rates followed by an oral or written quotation;
 - 7.3 An oral acceptance of the quotation with the provision of an order number, alternatively, the provision of a written standard order form by the officials of the Defendant;
 - 7.4 The Plaintiff would prepare a contract document and a vehicle sheet relevant to the transaction;
 - 7.5 The Plaintiff would deliver the vehicle to the Defendant's official in Bhisho at which time the official concerned would inspect the vehicle, signs check sheet and contract and take delivery of the vehicle.
8. The basic charge out rate for the hiring of vehicles, was as follows:
 - 8.1 A basic charge per day (first 100km free);
 - 8.2 A delivery charge;
 - 8.3 All fuel costs.
9. On 7 December 2016 the parties reached agreement as follows:

- 9.1 The Defendant admitted indebtedness in full in respect of the claims listed as POC2, POC3, POC4, POC7, POC13, POC24, POC25, POC27, POC29, POC31, POC33 and POC34 in the sum of R38 989,38 (Thirty Eight Thousand Nine Hundred and Eighty Nine Rand and Thirty Eight Cents);
- 9.2 The defendant admitted partial liability in respect of the following claims:
- 9.2.1 POC5 – R15 639,85 (Fifteen Thousand Six Hundred and Thirty Nine Rand and Eighty Five Cents);
- 9.2.2 POC18 – R9 051,71 (Nine Thousand and Fifty One Rand and Seventy One Cents);
- 9.2.3 POC19 – R17 334,96 (Seventeen Thousand Three Hundred and Thirty Four Rand and Ninety Six Cents);
- 9.2.4 TOTAL – R42 026,52 (Forty Two Thousand and Twenty Six Rand and Fifty Two Cents).
- 9.3 Certain of the claims were settled directly between the parties as follows:
- 9.3.1 POC8 – R1 940,00 (One Thousand Nine Hundred and Forty Rand);
- 9.3.2 POC26 – R4 637,17 (Four Thousand Six Hundred and Thirty Seven Rand and Seventeen Cents);
- 9.3.3 POC28 - R4 637,17 (Four Thousand Six Hundred and Thirty Seven Rand and Seventeen Cents);
- 9.3.4 POC30 - R4 637,17 (Four Thousand Six Hundred and Thirty Seven Rand and Seventeen Cents);

9.3.5 POC32 – R11 261,44 (Eleven Thousand Two Hundred and Sixty One Rand and Forty Four Cents);

9.3.6 TOTAL – R27 112,95 (Twenty Seven Thousand One Hundred and Twelve Rand and Ninety Five Cents).

9.4 The Defendant's agreed indebtedness as set out above in the sum of R108 128, 85 (One Hundred and Eight Thousand One Hundred and Twenty Eight Rand and Eighty Five Cents) plus interest was paid by the Defendant at the end of March 2017.

9.5 The balance of the claims referred to in paragraph 9.2 above remains in dispute, these being as follows:

9.5.1 POC5 – R16 403,55 (Sixteen Thousand Four Hundred and Three Rand and Fifty Five Cents);

9.5.2 POC18 – R17 280,55 (Seventeen Thousand Two Hundred and Eighty Rand and Fifty Five Cents);

9.5.3 POC19 – R79 740,80 (Seventy Nine Thousand Seven Hundred and Forty Rand and Eighty Cents);

9.5.4 TOTAL – R113 424,90 (One Hundred and Thirteen Thousand Four Hundred and Twenty Four Rand and Ninety Cents);

9.6 The Defendant disputes payment of the claims listed as POC6, POC9, POC10, POC 11, POC 12, POC 14, POC15, POC16, POC17 and POC20 in the total sum of R70 715,91 (Seventy Thousand Seven Hundred and Fifteen Rand and Ninety One Cents), in their entirety;

- 9.7 The Plaintiff has abandoned the claims referred to as POC21, POC22 and POC23;
 - 9.8 A copy of the minute of the pre-trial meeting confirming the above is annexed hereto, marked **“A”**;
 - 9.9 A schedule of the disputed claims in the sum of R184 141,69 (One Hundred and Eighty Four Thousand One Hundred and Forty One Rand and Sixty Nine Cents) is annexed hereto, marked **“B”**;
 - 9.10 All the Plaintiff's claims relate to charges recoverable by it arising from the hiring of vehicles by the Defendant and/or its employees at its behest and constitute hiring charges, damages claims and/or claims for losses for late return of the vehicles as governed by the Plaintiff's standard terms and conditions of hire, an extract of which is annexed hereto, marked **“C”**, which governs all the hiring transactions;
 - 9.11 The Defendant admits the quantum of the Plaintiff's claims as set out in Annexure **“B”**.
10. A schedule and copies of the orders and invoices relevant to the Plaintiff's claims is annexed hereto marked **“D”**.

PLAINTIFF'S CONTENTIONS:

11. Plaintiff contends that:
 - 11.1 All claims made by it in respect of hiring, damages, losses and related charges of its vehicles by the Defendant are lawful and recoverable by virtue of the standard terms and conditions of hire as per Annexure **“C”** hereto, alternatively, on the basis of unjust enrichment.

DEFENDANT'S CONTENTION:

12. The Defendant:

12.1 disputes liability for the balance of the claims under POC5, POC18 and POC19 on the basis that the time period for which charges are raised, fall outside the period of the original order;

12.2 contends, in respect of the claims listed as POC6, POC10, POC11, POC12, POC14, POC15, POC16, POC17 and POC20 that, although the claim is an extension of the original order, it falls outside the period of the original order.

ISSUES TO BE DETERMINED:

13. Whether the Plaintiff is entitled to payment from the Defendants of its claims that remain in dispute in terms of the general terms and conditions of the rental agreement and/or on the basis of enrichment, notwithstanding the fact that the balance of the claims under POC5, POC18 and POC19 fall outside the period of the original order and the claims listed as POC6, POC9 POC10, POC11, POC12, POC14, POC15, POC16, POC17 and POC20, although constituting an extension of the original order, fall outside the period of the original order.

14. Any other question of law necessary and/or incidental for purposes of giving effect to, alternatively, determining the above issues.

[4] It is apparent from both the statements embodying the stated case and the *Rule 37* minute in respect of a pre-trial meeting held on the 7 and 8 December 2016, that:

Defendant partially admits liability in respect of three of the remaining claims.

In respect of ten of the remaining claims, liability for the entire amount claimed therein is denied.

In respect of the claims where the claims are partially admitted, defendant asserts that these claims fall outside the period of the original order.

In respect of the amounts where liability of the entire amount is disputed, defendant asserts that the claims are an extension of an original order, but fall outside the period of the original order.

From this, it is clear that the existence of an agreement/s between the parties is not denied. This, in my view, is implicit in defendant's contention or basis for denying liability for payment of these amounts.

[5] Initially defendant pleaded that its employees who transacted with the plaintiff lacked the authority to bind the defendant. This defence fell by the wayside. This makes it difficult to understand the essence of the defence raised by the defendant in respect of both categories of claims. I do not understand defendant's assertion to be that plaintiff did not provide hired vehicles as alleged to the defendant or its employees for the stated duration or periods mentioned. The defence in respect of the claims that are denied in their entirety is even more obscure:

"Although the claim is an extension of the original order, it falls outside the period of the original order."

[6] In what appears to be a revival of the initial defence, which does not form part of the stated case, lack of authority on the part of defendant's employees, *Mr Kubukeli* argued that in respect of the invoices in issue, there were no official orders issued in line with the defendant's Supply Chain Management Policy. In the same breath, according to the statement containing the stated case, defendant contends as far as the last category of

claims is concerned, which is the bulk of the disputed claims, that the claim is an extension of the original order, but falls outside the period of the original order. This gives that impression that the original order was extended, which explains the claim falling outside the period of the original order, which as I understand, was extended.

[7] Plaintiff contends that the claims are in respect of charges related to the hiring of motor vehicles to the defendant, damages thereto, losses and related charges. And that same are recoverable by virtue of the standard terms and conditions of hire. In the general terms and conditions of applicable to the hiring of vehicles (attached as annexure “C”) to the stated case, rental period is defined as follows:

1.6 “RENTAL PERIOD” means the period commencing at the moment the keys to the vehicle are handed to the renter and terminating when the keys are returned to MEYERS VEHICLE HIRE.”

[8] In respect of the partially admitted claims – POC5 and POC19 – there is a charge for damage to the motor vehicles – the hired motor vehicles were involved in accidents. It is not clear what part of the claimed amounts defendant later admitted and on what basis. This includes POC18 where there is no suggestion that the “hired” vehicle was involved in accident.

[9] Also annexed to the agreement as regards the stated case is a grid / table containing: claim numbers, order numbers and invoice numbers regarding the disputed claims marked “D”. In respect of POC17 (wholly

disputed) and POC18 (partially disputed) there are no order numbers reflected. In respect of POC19 and POC20 the table records that the order was made verbally.

[10] We do know however from defendant's contentions that there was an original order, that at some stage it was extended, (in respect of the claims denied in their entirety). So, there must have been an order in terms of POC20, although defendant alleges the claim falls outside the period of the original order – which according to defendant was extended. I have already noted that the defendant does not deny that delivery of the hired vehicles occurred on the given date so did the return thereof.

[11] The question that I am asked to adjudicate is whether the plaintiff is entitled to payment notwithstanding the fact that according to the defendant "the claims fall outside the period of the original order". The definition of "Rental Period" in the general terms and conditions appears to be clear and unambiguous – to be the period commencing at the moment the keys to the vehicle are handed to the renter and as terminating when the vehicle and the keys are returned to plaintiff. In my view, it therefore follows that the defendant should be liable for the costs associated with having been in possession of plaintiff's vehicles for the period defined in the general terms and conditions as the "Rental Period". Accordingly the question I have been asked to adjudicate is answered in favour of the plaintiff.

[12] Judgment is entered in favour of the plaintiff against the defendant for payment of the sum of R184 141.69 plus interest.

Costs of suit, such costs to include the reserved costs of 9 December 2016 and 16 January 2017.

**N G BESHE
JUDGE OF THE HIGH COURT**

APPEARANCES

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Date Heard : 28 May 2018
Date Reserved : 28 May 2018

Date Delivered : 23 October 2018