

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, MTHATHA**

Case no. 319/18

Date heard: 19/6/18

Date delivered: 21/6/18

Not reportable

In the matter between:

Royal HaskononGDHV (Pty) Ltd

Applicant

and

Alfred Nzo District Municipality

Respondent

JUDGMENT

Plasket J:

[1] The applicant, by way of a simple summons, claimed from the respondent payment of R1 259 500, which it alleged was due and payable 'in respect of invoice number 1003400 . . . for the preliminary design of the scheme and off-channel dam storage and completing business plan approval as per the extension of scope of appointment to include stage three of the project in the Umzinvubu Ward 6 Water Supply Scheme'. It also claimed interest and costs.

[2] The respondent entered an appearance to defend and the applicant then filed an application for summary judgment. The respondent opposes that application. It does so through the affidavit of Mr Ernest Dzide, the respondent's acting manager for water services.

[3] The crisp issue that I am required to decide is whether the respondent has raised a bona fide defence that is good in law. See *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) para 32; *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426C-D.

[4] In his affidavit, Mr Dzide set out the background to the present dispute. In 2011, he said, the respondent invited tenders for the design and implementation of the Umzimvubu Ward 6 Water Supply Scheme. It was divided into three phases. The tender was awarded to the applicant.

[5] Mr Dzide stated that phases 1 and 2 were completed and phase three has yet to commence. Indeed, he stated that '[n]o work at all has been commissioned on phase 3 of the project'. From this he concluded that no payment is due to the applicant on account of its 'alleged performance in phase 3 of the project because no performance has been rendered'.

[6] He encapsulated the respondent's defence as follows:

[12] I have seen the plaintiff's simple summons. It claims payment of the sum of R1 259 500 . . . being an amount allegedly due, owing and payable by the defendant to the plaintiff for the preliminary design of the scheme and off channel dam storage and completing business plan approval as per extension of scope of appointment to include stage three of the project. I have read what is stated in the simple summons in conjunction with annexures A, B, C and D thereto.

[13] At the outset, it is apposite to make it clear that the preliminary design of the scheme formed part of phase 2 of the project, not phase 3 and that business plan formed part of phase 1 of the project, not phase 3. The defendant does not owe the plaintiff in respect of phases 1 and 2 of the project, the plaintiff having rendered services in relation thereto, submitted invoices and the defendant having honoured such invoices. As already stated elsewhere in this affidavit, no work has been done yet by the plaintiff in respect of phase 3 and thus, no payment is due.'

[7] The allegations made in Mr Dzide's affidavit amount to this: if the applicant is claiming for payment for work in relation to phase 3, no payment is due because phase 3 has not commenced yet and the applicant could not have done any work; if

the applicant is claiming for the work described in the summons, that work was performed in phases 1 and 2 and was paid for by the respondent.

[8] These are defences that are good in law – that payment either was not due at all or has been effected. In my view, the respondent has disclosed fully the nature and grounds of its defence. It has thus succeeded in raising a bona fide defence and so summary judgment must be refused. *Maharaj v First National Bank Ltd* 1976 (1) SA 418 (A) at 426A-B.

[9] I make the following order.

- (a) The application for summary judgment is dismissed.
- (b) The respondent is granted leave to defend.
- (c) The costs of this application shall be costs in the trial.

C Plasket

Judge of the High Court

APPEARANCES

For the applicant: F M Masweneng
Instructed by
Masweneng Attorneys, Pretoria
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For the respondent: A M Bodlani
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