

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates	YES / NO
Circulate to Magistrates:	YES / NO

NORTHERN CAPE HIGH COURT, KIMBERLEY

Saakno: / Case number: **2008 / 2011**
Datum verhoor: / Date heard: **11 / 05 / 2012**
Datum gelewer/Date delivered:

In the matter between:

PEYPER SESELE INCORPORATED t/a
PEYPER SESELE ATTORNEYS

Applicant

and

GA-SEGONYANA MUNICIPALITY

Respondent

Coram: Lacock R

REASONS FOR JUDGMENT

LACOCK J:

[1] In this matter the applicant, a firm of attorneys, had a summons issued against the respondent for payment of an amount of R1,606,138.72 plus interest thereon in respect of legal services allegedly rendered by the applicant to the respondent. The applicant relies on a "*partly written partly oral agreement of mandate*" as its cause of action. The terms of the agreement pleaded, read:

- "5.1 The plaintiff would act as attorneys and conveyancers on behalf of the Defendant in inter alia various evictions in **Mothibistad**, the transfer of property from the National Government to the Defendant and the transfer of **4 000 (four thousand)** properties by way of certain endorsements, registrations and applications situated in the location of **Mothibistad**, which transfers would be effected to people in the community.
- 5.2 The Defendant would pay to the Plaintiff all agreed, alternatively reasonable fees for professional services rendered by the Plaintiff to the Defendant, alternatively an apportionment of such fees should the transfer of the properties not be completed.
- 5.3 Plaintiff shall render accounts to Defendant in accordance with the prescribed tariffs for conveyancing work laid down by the **Law Society of the Northern Cape**, alternatively the **Law Society of the North West Province**."

[2] It is common cause that the alleged written part of the agreement is contained in a letter addressed by the respondent to the applicant, the contents whereof read,

"APPOINTMENT LETTER:

1. VARIOUS EVICTIONS MOTHIBISTAD (PORTION 3 OF FARM 690 KURUMAN RESERVE)
2. TRANSFER: NATIONAL GOVERNMENT / GA-SEGONYANA MUNICIPALITY
PORTION 3 OF FARM 690 KURUMAN RESERVE KURUMAN
3. TRANSFER: LOCATION OF MOTHIBISTAD
4000 PROPERTIES

I hereby appoint Messrs Peyper Attorneys to attend to various evictions of illegal land owners in the Mothibistad area, including but not limited to the Mapoteng area in the Magojaneng Village.

In order to finalise the eviction matter, the transfer of the said Portion 3 of Farm 690 Kuruman Reserve, is essential to take place.

I discussed during my consultation with Klaas Majaphage and Madalane Regal during January 2009 to leave no stone unturned in executing and finalizing this matter."

For the remaining part the agreement the applicant relies on oral terms. In its particulars of claim the applicant further alleges,

"The Plaintiff duly complied with all its obligations in terms of the agreement up until the Defendant cancelled the Plaintiff's mandate.

7.

7.1 *The fees which are now due, owing and payable to the Plaintiff in respect of professional services rendered to the Defendant amounts to **R2 602 138.72**.*

7.2 *Copies of the statements of account are appended hereto marked annexure "C".*

7.3 *The statements of account are drafted in accordance with the guidelines for conveyancing work as prescribed by the **Law Society of the Northern Cape**, alternatively the **Law Society of the North West Province**."*

[3] The respondent entered appearance to defend the matter, whereupon the applicant applied for summary judgment in terms of Rule 32 of the uniform Rules of Court. In her supporting affidavit for purposes of the application, Ms Regal, representing the applicant, stated,

"The Respondent gave notice of his intention to defend the action. It is my opinion that the Respondent does not have a bona fide defense to the Applicant's claim and that notice of intention to defend the action was given only for purposes of delay.

I verify the cause of action and the amounts claimed by the Applicant."

Mr Toto, the acting corporate services manager of the respondent, responded to the aforesaid averments as follows,

"On or about January 2009, Ga-segonyana Municipality, appointed the firm Peyper Majaphage Attorneys at the time, to:

- (i) convert Deeds of Grant into full Title Deeds at Mothibistad.*
- (ii) institute various eviction proceedings at Mothibistad and surrounding areas against people who illegally occupied land belonging to Ga-Segonyana Local Municipality.*
- (iii) Transfer property from National Government to Respondent (defendant).*

4.

In terms of the Deeds of Grant, the Applicant was appointed to convert the individual Deeds of Grant to full Title Deeds. The Department of Cooperative Governance Human Settlements and Traditional Affairs (COGHSTA) a roleplayer, was to grant all occupants full Title Deed, as a National Policy and being the funder, the Department (COGHSTA) will pay the attorneys appointed by Ga-segonyana Local Municipality in terms of its tariff schedule.

5.

The Applicant will undertake the process of converting the Deeds of Grants and upon completion of its mandate, submit its invoice to the Department (COGHSTA) for payment. At first instance the Department refused to pay for the invoice as it was not in accordance with its approved tariff schedule and raised concerns on the poor quality of the work done to date on the conversion of Deeds of Grants.

6.

Subsequently a meeting was scheduled between the Department (COGHSTA) and the Applicant's representatives, Messrs Madalane Regal and Klaas Majaphage, an agreement was reached that the Department (COGHSTA) would honour its approved tariff of R800 per erven. See correspondence marked OPT1.

7.

At all material times, the Applicant knew that the payment will be done in accordance with the Departmental tariff and they agreed to submit the invoice with the correct tariff and were duly paid."

(It is common cause that the reference to COGHSTA is a reference to the Department of Cooperative Governance Human Settlements and Traditional Affairs.)

[4] The matter came before me on 11 May 2012, on which date I made the following order:

- "1. THE APPLICATION FOR SUMMARY JUDGMENT IS DISMISSED.**
- 2. THE DEFENDANT IS GRANTED LEAVE TO DEFEND THE ACTION.**
- 3. FURTHER PAPERS HEREIN SHALL BE FILED IN ACCORDANCE WITH THE UNIFORM COURT RULES AS IF NOTICE OF INTENTION TO DEFEND WAS GIVEN ON DATE OF THIS ORDER.**
- 4. COSTS WILL BE COSTS IN THE CAUSE."**

What follows are the reasons for the said order made.

[5] Rule 32(1) provides,

"Where the defendant has delivered notice of intention to defend, the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only-

- (a) on a liquid document;*
- (b) for a liquidated amount in money;*
- (c) for delivery of specified movable property; or*
- (d) for ejectment;*

together with any claim for interest and costs."

Although Mrs Erasmus submitted that the amount claimed is not a liquidated amount, i do not find it necessary to deal with this argument in view of my findings that follow hereunder.

[6] The applicable principles in the consideration of an application for summary judgment had been properly summarised by Blieden J in **MARSH AND ANOTHER V STANDARD BANK OF SA LIMITED** 2000 (4) sa 947 (WLD). These are

- "1. *The Rule requires the defendant to set out in his affidavit sufficient facts which, if proved at the trial, will constitute an answer to the plaintiff's claim. Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T); District Bank Ltd v Hoosain and Others 1984 (4) SA 544 (C).*
2. *At the summary judgment stage of the proceedings it is not for the Court to decide any balance of probabilities or determine the likelihood of the deponent's allegations being true or false. Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426 where at A-E the position is succinctly summarised by Corbett JA (as he then was) as follows:*

'Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the Court enquires into is: (a) whether the defendnat has "fully" disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendnat appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good

in law. If satisfied on these matters, the Court must refuse summary judgment, either wholly or in part, as the case may be. The word "fully" as used in the context of the Rules (and its predecessors), has been the cause of some judicial controversy in the past. It connotes, in my view, that while the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material facts upon which it is to decide whether the affidavit discloses a bona fide defence... At the same time the defendnat is not expected to formulate his opposition to the claim with the precision that would be required of a plea; nor does the Court examine it by the standards of pleading.'

3. *The subrule does not require the defendant to satisfy the Court that his allegations are believed by him to be true. It is sufficient if the defendant's affidavit shows that there is a reasonable possibility that the defence he advances may succeed on trial. Shepstone v Shepstone 1974 (2) SA 462 (N) at 467A.*
4. *The Court must be apprised of the facts upon which the defendnat relies with sufficient particularity and completeness so as to be able to hold that if these statements of facts are found at the trial to be correct, judgment should be given for the defendant.*
5. *Summary judgment is an extraordinary and stringent remedy and it is always necessary to keep this in mind when exercising a discretion whether to grant or refuse it. Arend and Another v Astra Furnishers (Pty) Ltd 1974 (1) SA 298 (C) at 305.*
6. *A Court must be careful to guard against injustice to the defendnat who is called upon at short notice and without the benefit of further particulars, discovery or cross-examination to satisfy it that he has a bona fide defence. Breitenbach v Fiat (supra at 227D-H)."*

(949C to 950B).

- [7] The respondent in essence relies on a tri-partite agreement concluded between the applicant, the respondent and the Department of COGHSTA in terms whereof the applicant undertook to render certain professional services to the respondent, and for which services once duly executed, the said Department would pay the applicant.

7.1 Confirmation of this alleged agreement is to be found in a letter dated 8 February 2012 addressed by COGHSTA to the respondent, reading,

- "1. During the municipal demarcation process, part of the municipalities, towns and rural areas that were previously demarcated to the North West Province were re-demarcated to the Northern Cape Province. The following areas were re-demarcated to the Northern Cape Province:*
 - Pampierstad*
 - Moshaweng*
 - Mothibistad*
- 2. This Department then, together with the respective municipalities collectively decided to assist the communities with the conversion of property ownership from the existing "Deeds of Grants" issued in terms of Proclamation R293 of 1962 (Bophutatswana Legislation), which prohibits them from full ownership of the properties to full ownership.*
- 3. This process was conducted under the National Housing Subsidy Programme which promotes full ownership of all state subsidized housing and the tariff per transfer, to be paid to the attorney was in terms of the Housing Subsidy Quantum as approved by the Minister.*
- 4. Payper Sesele Attorneys Inc endorsed 187 "Deeds of Grants" and an amount of R149,600.00 was paid to them on the 16th of September 2010 for work done.*
- 5. However, during the year 2011, our Department together with your newly appointed attorneys, Nico Gouws Attorneys, discovered that the work done by Peyper Sesele Attorneys Inc was null and void as the land still vested in the North West Province. Our Department is now in the process of transferring the land from the North West Province to the Northern Cape Province. Once completed, then the respective "Deeds of Grants" can be endorsed. This was confirmed by the Registrar of Deeds in Vryburg."*

7.2 It appears from annexures OPT2 and OPT3 to Mr Toto's opposing affidavit that the applicant in fact rendered an account to COGHSTA and was paid an amount of R149,600.00 in respect of its fee "*for registration of 187 erven at R800.00 each*" in Mothibistad.

[8] It is clear that, should the respondent succeed with these averments, it would constitute a complete defence to the applicant's claim. I therefore dismissed the application for summary judgment.

HJ Lacock
JUDGE

On behalf of Applicant: Adv WJ Coetzee oio Haarhoffs Inc.

On behalf of Respondent: Adv S Erasmus oio Duncan & Rothman Inc