

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2023/ 034824

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
26/08/24	[REDACTED]
DATE	SIGNATURE

In the matter between:

TLADI JACOB MOKOENA

Applicant

and

**THE SOUTH AFRICAN LEGAL PRACTICE
COUNCIL**

First Respondent

SOUTH AFRICAN REVENUE SERVICES

Second Respondent

DEV MAHARAJ INCORPORATED

Third Respondent

DEVENDRANATH MAHARAJ

Fourth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 19 August 2024.

JUDGMENT

SIPUNZI, AJ

Introduction

[1] This is an application in which the applicant, an advocate¹ in practice, seeks an order to compel Dev Maharaj Incorporated, a firm of attorneys and its director Mr. Devendranath Maharaj, an attorney (the respondents), to pay fees that became due to him for services rendered in various matters that served before court. The applicant seeks an order in the following terms:

'Part A: Outstanding invoices owed to the applicant by Dev Maharaj Incorporated and Mr. Devendranath Maharaj:

1. An order directing the third respondent, Dev Maharaj Incorporated and the fourth respondent, Mr. Devendranath Maharaj to deliver the records (proceeding record) and reasons in respect of the decision not to pay all the applicant's outstanding invoices.
2. In the event of the third respondent- Dev Maharaj Incorporated and Fourth Respondent- Mr. Devendranath Maharaj not being in possession of the required records (proceedings record), the third respondent- Dev Maharaj Incorporated and the fourth respondent- Mr. Devendranath must provide an explanation on affidavits indicating the whereabouts of the required records (proceeding record) and the reasons for the reasons in respect of the decision not to pay the applicant's outstanding invoices.
3. The third respondent, Dev Maharaj Incorporated and the fourth respondent- Mr. Devendranath Maharaj are directed to pay all the applicant's outstanding invoices within seven (7) days after service of the court papers upon them.
4. Third respondent- Dev Maharaj Incorporated and the fourth respondent- Mr Devendranath Maharaj shall pay the applicant an amount of R1 392 973. 20 (One Million and Three Hundred and Ninety -Two Thousand and Nine Hundred

¹ The applicant is practicing as a trust account advocate, in terms of section 34(2)(a)(ii) of the Legal Practice Act 28 of 2014.

and Seventy-Three Rand and Twenty Cents only) in full and final settlement of all the applicant's outstanding invoices.

5. Interest tempore morae at 15,5 % from the date of the invoices till the payment date.
6. The costs of this application against the third respondent- Dev Maharaj Incorporated and the fourth respondent- Mr. Devendranath Maharaj on attorney and own client scale.
7. The granting of further and /or alternative relief.'

In Part B of the Notice of Motion, the applicant sought relief against the first respondent, the South African Legal Practice Council (SALPC). However, at the commencement of the oral submissions, the applicant withdrew 'Part B' and 'Part C' of the application. For the sake of brevity, a summary of the relief outlined in these 'Parts' should suffice. In essence, 'Part B' sought to enforce the SALPC to commence disciplinary proceedings against the third respondent- Dev Maharaj Incorporated and the fourth respondent- Mr. Devendranath Maharaj. The applicant also sought to enforce the third and fourth respondents to disclose certain records to SALPC. According to him, such records were allegedly part of fraudulent activities in tax avoidance, fraud, extortion, defeating ends of justice, perjury, violation with the investment law, hiring of illegal immigrants, failure to register the illegal immigrants with SARS, failure to disclose PAYE for illegal immigrants and misappropriation or withholding of advocate fees that were due to him.

In Part C, the applicant sought an order that directed SARS to investigate the creation of alleged fake investment accounts that were created as part of tax avoidance by the third and fourth respondents. He also sought an order that directed SARS to charge the third respondent- Dev Maharaj Incorporated and the fourth respondent- Mr. Devendranath Maharaj with criminal charges relating to withholding of VAT output amounts of about R20 000 000 due to SARS for the past ten (10) years.

[2] The withdrawal of the application against the SALPC was also contained in the withdrawal notice dated 23 September 2023, and the applicant tendered the costs. When the matter served before this court on 22 May 2024, Mr. Stoker appeared on behalf of the SALPC and recorded their consent to the withdrawal of the application.

The applicant confirmed that the relief sought under 'Part B', as outlined in the Notice of Motion was abandoned.

[3] The second respondent did not take part in the proceedings, despite having been served with the application on 16 November 2023. Because the applicant also abandoned 'Part C' of the Notice of Motion, the focus of this judgment will be on the remainder of the relief sought, being 'Part A'.

[4] The application is opposed by the third and the fourth respondents (the respondents). They did not dispute that the applicant had rendered services on their instructions. The basis of the opposition was that at all material times when the applicant rendered the services on their behalf, there was a service level agreement that fees payable to him would be paid when the Road Accident Fund (RAF), in whose matters he was on brief, had been taxed and paid.

[5] On 29 November 2023, this matter served before court on an unopposed basis. It was however removed from the unopposed motion roll to be placed on the opposed roll.

[6] When the matter served on 22 May 2024, the respondents sought condonation for the late filing of the heads of arguments. This application was not opposed. Having considered their application and what occasioned their failure to file on time, I am of the view that the application should succeed.

Legal representation of the applicant

[7] From the perusal of the papers, it became apparent that the notice of motion appeared to be signed by the applicant as counsel. This anomaly led/prompted the court to inquire about his appearance before the start of the oral arguments/submissions. The applicant confirmed that he was appearing as an attorney, counsel and in personal capacity in his own matter. The applicant is practising as a trust advocate in terms of section 34(2)(a)(ii) of the Legal Practice Act (LPA). When I pointed out to the applicant that the situation was undesirable,² in protest, he insisted that the terms of his admission as a trust advocate, permitted him

² Rule 9.4 of the Code of conduct.

to appear in such a manner. Ultimately, it was settled that in the proceedings, he was appearing in person.³

Summary of facts

[8] The facts upon which the dispute arose are largely common cause.⁴ The plaintiff provided professional services as counsel, representing the RAF, and on the brief and instructions of the third and fourth respondents. Their relationship operated from 2016 until 2020, when the last matter in which he appeared was finalised. During the subsistence of their contractual relationship, the respondents made a practice to pay the plaintiff every four to five months, for the services he would have provided in various RAF matters over time.

[9] In this instance, the applicant claims payment in the sum of R 1 392 973.20 (One Million Three Hundred and Ninety-Two Thousand, Nine Hundred and Seventy-Three Rand and Twenty Cents), in full and final settlement of all his outstanding invoices, with interest. The amount claimed being the total sum of fees accumulated in thirty (30) matters.⁵ The applicant claimed that the respondents refused or neglected to pay the fees that were due to him, in contravention of the code of conduct that regulates the relationship and or payment of fees, between counsel and briefing legal practitioners.

[10] According to the respondents, they operated on the widely accepted practice among legal practitioners that litigation in RAF matters invariably proceeded with massive delays, thereby affecting payment of fees that would be due to legal practitioners. The respondents contended that the applicant was always aware that he would receive his fees when the respondents received payments from the RAF. The respondents also contended that due to non-payment or delays in payment of fees by the RAF, in one instance, they also concluded a settlement agreement in terms of which they resolved to pay some of the money to the applicant. The respondents also raised points *in limine*, upon which they argued that the applicant was not entitled to the reliefs he sought against them, as shall be traversed hereunder.

³ Clause 25.4 of the Code of conduct.

⁴ As gleaned from the founding, answering and replying affidavits.

⁵ Founding affidavit, paras 49 and 50.

Applicant's case

[11] According to the applicant, the respondents were in breach of the code of conduct that required them to pay counsel fees before the services were rendered and or within thirty days upon submission of his bill. Upon service of the answering affidavit of the respondents, which also contained some defence to the claims, the applicant elected not to rebut or gainsay same. In his replying affidavit, the applicant elected not to reply nor challenge the points *in limine* that were raised by the respondents. Instead, the applicant sought other reliefs that did not form part of the initial notice of motion, and which were not dealt with in his founding affidavit. During oral arguments, the contents of his replying affidavit, which had not been part of his founding affidavit, were brought to the attention of the applicant. Amongst others, such content included calls for the SALPC KZN to prefer criminal charges against various legal representatives; SALPC- GP to prefer criminal charges against the respondents, and for the Bar Council of Advocates to initiate disciplinary proceedings against other legal practitioners.⁶ The applicant elected to abandon the relief sought in his replying affidavit.

[12] In any event, the style and content of the reply to the answering affidavit of the respondents did not comply with the rules, they were out of place. The replying affidavit contained fresh averments that were not part of the applicant's case as set out in the founding papers of his application. It is therefore befitting not to place any regard to its content.

Respondents' case

Points in limine

Non-joinder

[13] According to the respondents, the subject matter of this application relates to outstanding payments for work done in litigation against the RAF. They contended that it is widely accepted among practitioners that litigation in RAF matters invariably proceeds with massive delays, thereby affecting payment of fees that would be due to

⁶ Applicant's replying affidavit dated 27 February 2024) runs into more than 100 pages and it is impossible to refer to all its averments.

legal practitioners. They argue that applicant was aware that he would receive his fees when the respondents received payments from the RAF. They submitted that the RAF had a significant interest in the outcome of the application and should have been joined.⁷

[14] Further, in pursuit of payment of his fees, the applicant had been in direct contact and extensive interaction with the RAF, to no avail. He also lodged a complaint against the respondents, on the same facts, with the first respondent, however, this too returned no positive results in his quest. The respondents also alleged that the applicant had directly contacted their client (RAF) in attempts to demand payment for counsel fees. According to them, the applicant went about this without their prior consent and knowledge.

[15] Much as the applicant was entitled to sue the respondents for fees due and payable to him, this process is also regulated in terms of the code of conduct.⁸ This conduct of the applicant appears to be a direct contrast to Clause 27.4 of the code of conduct, which provides that, "Counsel shall receive fees charged only from or through the instructing attorney who gave the brief to counsel, except where such attorney, for reasons of insolvency, or for any other reason, is unable to pay, in which circumstances, with leave from the Provincial Council, counsel may receive fees due from another source in discharge of the indebtedness of the attorney."

[16] The applicant did not reply to or dispute these allegations. The applicant offered no evidence against the defence raised.

[17] As it seems, the applicant had not shown that the respondents were insolvent or unable to pay or that he had sought leave of the SALPC to pursue payment of his fees directly from the RAF. There were no factors that sought to rebut the points raised by the respondents. In the circumstances, the defence raised should succeed.

Lis pendens

[18] The respondents averred that there is a pending litigation, on the same cause of action, with the same parties, seeking the same relief, under Case No. 2023/033072, issued in this Court. According to the respondents, that application is

⁷ Third and fourth respondents' answering affidavit, para 6.3-6.4.

⁸ Clause 35, "Recovery by counsel of fees owing and payable", read with Clause 51.

opposed and still pending before this Court. The applicant elected not to engage with these allegations. They remained unchallenged. Without any factors or evidence presented to gainsay these allegations, in my view, the defence raised should succeed.

Irregular notice of motion: non-compliance with Uniform Rule 6(5)(b)(i) & (iii)

[19] The respondents complained that the notice of motion bears the signature of the applicant as both attorney and the counsel for the applicant, whereas the applicant is not an attorney. They argued that an attorney may not be counsel in a matter where he is also appearing in his personal capacity. They further argued that an advocate is precluded from signing a notice of motion. Further, that the applicant failed to comply with Uniform Rule 6(5)(b)(i) and (iii) to the extent that he failed to provide a service address for processes and provide days on which the respondents would be required to respond to the service. Uniform Rule 6(5)(b)(i) provides that, "(b)(i) In a notice of motion the applicant must appoint an address within 15 kilometres of the office of the registrar, at which applicant will accept notice and service of all documents in such proceedings. (ii) State the applicant's postal, facsimile or electronic mail addresses where available and (iii) Set forth a day, not less than 10 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether respondent intends to oppose such application, and must further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the said respondent of the said notice."

[20] The applicant elected not to challenge nor rebut the allegations contained under this point *in limine*. It remains incontestable that the applicant was under a professional duty not to induce a sense of confusion on the part of other litigants and interested parties about his capacity in a case where he may be acting in his professional capacity as against his personal capacity.⁹

⁹ Rule 9.4 of the Code of conduct.

[21] Therefore, in my respectful view, on this aspect, the applicant's posture may have negatively impacted on the integrity in the performance of his professional services. Once more, the respondents' point *in limine* should be upheld.

Pre-existing dispute of fact

[22] The respondents contended that there was a dispute of fact that existed before the application was lodged. They alleged that the applicant had a complaint that was pending with the first respondent. Apparently, such complaint also related to the outstanding payments of his fees on matters that he provided services on behalf of the respondents' firm in RAF matters. After the respondents filed their answering affidavit, as alleged, it seemed that the applicant abandoned that process, in favour of this application.

[23] The letter dated 27 March 2023, addressed to the applicant, and written by C Miranda Attorneys, who was the legal representative of the respondents bears testimony to the allegations of the respondents that there was an existing dispute on which arose from the same subject of the application at hand. This letter sought to inform the applicant the writer was acting on behalf of the respondents when the application was launched. The content of the email dated 11 April 2023, from the applicant to the legal representatives of the respondents clearly showed that already before the notice of motion was served on the respondents, there was a dispute that was before the SALPC. This email also showed that the dispute involved the applicant and the respondents, and the subject matter was the alleged failure of the respondents to pay fees that were due to the applicant.¹⁰

[24] The existence of the pre-existing dispute of facts would be established on a balance of probabilities if regard be also had to the contents of the communication exchanged between the applicant and the legal representatives of the respondents on one hand, as well as between the SALPC, the applicant and the legal representatives of the respondents on the other. The applicant did not admit nor deny the communication set out above, and as it appeared in the respondents' answering affidavit. Furthermore, the applicant offered no substantial resistance to the alleged

¹⁰ Third and Fourth respondents' opposing affidavit (27 November 2023 in 02: Notices- Opposed application, Case lines 02- 54, DM 3, email dated 11 April 2023.

pre-existing dispute of fact. Wherefore, in the circumstances, this point *in limine* should stand.

Defects in relief claimed in Part A

[25] This relates to the prayers 1 and 2 in 'Part A' of the notice of motion, where the applicant prayed for an order that directed the respondents to furnish the applicant with the record of proceedings wherein a decision was taken by the respondents not to pay his fees, failing which that they should be directed to disclose the location of such a record. The respondents contended that this prayer was akin to review proceedings, therefore argued that the applicant ought to have complied with Uniform Rule 53.

[26] The respondents also contended that the most suitable process that would have adequately addressed the applicant's quest would have been action proceedings, where it would have been permissible for him to obtain some form of evidence through discovery procedures. The respondents made the point that they were merely service providers to the RAF, not in positions of decision making and therefore exercise no authority over the business of the RAF. According to the respondents, that was yet another factor that strengthened their argument that the RAF should have been joined in the application.

[27] The respondents claimed that they were also impoverished by the non-payment of fees for services rendered to the RAF in various matters. They too, had not been paid by the RAF and in no position to pay the applicant's fees. On this too, there was no substantial resistance or rebuttal of the allegations made by the respondents.

[28] The respondents also sought to answer to the relief that was sought in Part B of the notice of motion. However, due to the withdrawal of the claim in Part B, I shall not burden this judgment by traversing the matters related thereto.

[29] In all the points *in limine* raised by the respondents, the applicant did not take issue or rebut and deny them. In the circumstances, I it difficult to interrogate the respondents' allegations. In the replying affidavit, the applicant elected not to respond to the allegations either; instead, he sought to bring in new matters that were not part of his founding affidavit. This was an explicit deviation from the established purpose

of pleadings, and in particular, the replying affidavit.¹¹ In the circumstances, and with the application of the *Plascon Evans Rule*¹² principle, facts and evidence that are not met with a denial and in rebuttal should be considered as proven. In the absence of any evidence or attempts to gainsay the allegations of the respondents on each point *in limine* above, they ought to be regarded as proven facts.

[30] Therefore, the substance of the points *in limine* remained unchallenged and should accordingly be upheld.

The main application

The applicable law

[31] Rule 7.8. of the General Council of the Bar of South Africa: Uniform Rules of Professional Conduct provides, under the heading, “Improper arrangement Re Fees” that, “Counsel may not agree with the attorney briefing him that counsel will await payment of the fees payable on that brief until the attorney shall have received them from the lay client.”

[32] Further, Rule 7.9. of the same rules provides for fees payable only by attorneys. Rule 7.9.1. states that, “Fees for any professional services may only be paid by or through an attorney, or by the Legal Aid Board, or the Road Accident Fund provided that the instructing attorney consents thereto in writing.”

Evaluation

[33] From the onset, the essence of the dispute between the parties revolves around the apparent arrangement for payment of counsel fees. According to the respondents, the letter of instruction to engage the services of the applicant, in the matter of *Ngobese Albert Mandla v RAF Case No. 06345/2014*, dated 10 February 2018, was

¹¹ *Bayat and Others v Hansa and Another* 1955 (3) SA 547 (N) at 553D – E, and more recently in *SATAWU and Another v Garvas and Others* 2013 (1) SA 83 CC at para 114, “Holding parties to pleadings is not pedantry. It is an integral part of the principle of legal certainty which is an element of the rule of law.”

¹² 1984 (3) SA 623(A) at 634-635 where it was stated:

“... where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, ... may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.”

In *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA), the court went further to say: “It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.” (Footnotes omitted).

an example of how they did business with the applicant.¹³ The matter was set down for hearing on 5 March 2018. The letter unequivocally states that, "Please note that you shall get paid immediately after we receive payment from our client, the Road Accident fund in terms of the allowed tariffs. Please note further that we shall not be responsible for the remainder of your fees in terms of your invoice should the taxing master decide to tax off any amounts."¹⁴ The applicant has also claimed payment for this matter.

[34] According to the respondents, the subject of their dispute was always the usual terms upon which they had always cooperated with applicant, since around 2016. The respondents contended that, "the applicant was always aware that he would receive his payments after the RAF had made payments to the third respondent, and readily accepted the reduced amounts that would be paid into his account."¹⁵

[35] The respondents also contended that the applicant elected to not contest nor engage with the averments that were made in the respondents' answering affidavit to the complaint. Instead, he replied by stating that he would respond in the first proceedings, leaving the dispute of fact raised by the respondents uncontested.¹⁶

[36] According to Clause 30. 1 of the code of conduct, if an attorney offers a brief to counsel which is already marked with a fee, counsel, upon acceptance of the brief, tacitly agrees to that fee. If counsel chooses to refuse the brief on those terms, counsel and the instructing attorney must expressly agree in writing or by email to a different fee, otherwise, if counsel performs the work mandated by the brief, the initial marked fee shall bind counsel.

[37] When the applicant's attention was drawn to the contents of this letter, he would not be committal. His response was to the effect that he could not be certain if he claimed payment for services in that matter. He would not admit or deny that such an arrangement existed in the general conduct of their business relationship. However, if regard is had to the averments in his founding affidavit that the respondents "would

¹³ SALPC Answering Affidavit, Annexure DM 1 Letter dated 5 March 2018 addressed to the applicant, Case lines 018-107.

¹⁴ Letter addressed to the applicant, signed by Mr. T Putsoane, marked DM 5 at page 55 of 228 of the third and fourth respondents' opposing affidavit (Case lines 02-58).

¹⁵ Affidavit of the fourth respondent in response to a complaint that was lodged by the applicant with the first respondent. @ Page 62 of 228 of the third and fourth respondents' opposing affidavit, marked DM 6 (Case lines 02-64- 02-65).

¹⁶ Third and fourth respondents' opposing affidavit, para 9.9.

pay him every four or five months for services rendered”, the letter from the respondents bears credence to the respondents’ contention that they operated on that understanding with the applicant.

[38] Furthermore, if the above is considered in light of the fact that their professional relationship was from 2016 to 2020, the respondents’ contentions do not appear to be farfetched. Let alone that their method of doing business was in direct violation of the rule that prohibited the applicant, as counsel, from accepting briefs on the basis that he would await payment of the fees payable on that brief until the attorney shall have received them from the lay client.¹⁷

[39] Instead, the main question that arises in the given circumstances would be whether it was still open for the applicant to abandon their long-standing agreement or method of doing business and call upon the court’s intervention when he was no longer pleased with the respondents. As a point of departure, one takes guidance from the principle in *Wells v South African Aluminite Company*. The principle stated that, “If there is one thing which, more than another, public policy requires, it is that men of full age and competent understanding shall have utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice.”¹⁸

[40] A closer look at their working arrangement over the years revealed that the parties were both happy with their rules of engagement even in circumstances where they were contrary to the code of conduct, upon which the applicant seeks to enforce. At this point, it is noteworthy that although their agreement was prohibited by Clause 26.1 of the LPA: Code of conduct of legal practitioners, the parties exercised their freedom to contract and were equally comfortable to be bound by such rules. Furthermore, it can be seen from a variety of averments in both the applicant’s founding affidavit; the answering affidavits of the respondents and the erstwhile first respondent, that the applicant enjoyed and benefitted from his relationship with the third and fourth respondent. Once more, reference to the brief dated 05 March 2018 sheds light to the reality that the applicant was always at liberty to contract with the respondents.

¹⁷ General Council of the Bar of South Africa: Uniform Rules of Professional Conduct, Rule 7.

¹⁸ *Wells v South African Aluminite Company* 1927 AD 69 at 73.

[41] Guided by the principle set out in *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd*,¹⁹ one finds that the applicant has not established any ground upon which interference with his long-standing arrangement with the respondents is warranted by the courts. The court in this case held that:

“The privity and sanctity of contract entails that contractual obligations must be honoured when the parties entered into the contractual agreement freely and voluntarily. The notion of the privity and the sanctity of contracts goes hand in hand with the freedom to contract. Taking into considerations the requirements of a valid contract, freedom to contract denotes the parties are free to enter into contracts and decide on the terms of the contract.”²⁰

[42] The respondents also contended that although they had not received payment from the RAF for services rendered, there was a settlement agreement in operation between them and the applicant in an attempt to meet his demands. This was done in appreciation of the egregious position of the applicant. The respondents had agreed to pay what they believed would be fair in order to alleviate his financial hardships. In one of the matters in which the applicant rendered services, he was paid an amount of R 170 000.²¹ It appears that this payment was also followed by an email dated 14 January 2023, to which a proof of payment was attached.²²

[43] The applicant did not deny that he received the amount of money as alleged by the respondent. He however sought to allege that he was not a willing participant in the settlement agreement that was signed, and which had his particulars and signature. Nonetheless, the applicant retained the money that was paid into his account. The applicant did not deny receipt of the same amount of money.

[44] As gleaned, the content and the detail of their settlement agreement appears to be conclusive evidence that the parties elected to resolve their dispute by making concessions. It also does not appear that the applicant was not appreciative of its purpose and content when he agreed to bind himself. The applicant also alleged that his signature as it appeared on the settlement agreement was fraudulently placed by the fourth respondent. The applicant alleged that the agreement was fraudulently

¹⁹ 2018 (2) SA 314 (SCA).

²⁰ Id at para 23.

²¹ This is also apparent in the settlement agreement dated 13 January 2023. The settlement agreement at page 109/228 (Case lines 02-112) Annexure DM 6 A and Case lines 018-117.

²² Annexure DM 7, Case lines 018-118.

obtained. On the settlement agreement, the applicant alleged that the conduct of the respondents was unethical and unlawful. However, his allegations were not supported by objective evidence when only looked closely at the agreement and if regard was also had to the fact that the applicant had also retained the amount of money that was paid in terms of their alleged settlement agreement.

[45] If the validity or sustainability of this settlement agreement and its terms are considered closely, regard must be had to some established legal principles that find application. For instance, the applicant did not allege that there was lack of consent on his part or that there was a mistake on his part and the respondents' part when this agreement was concluded. Upon receipt of payment, based on the settlement agreement, the applicant kept the money but still complained that the settlement agreement was null and void. He acquiesced to the agreement, and he did so without any substantial evidence to support his allegations.

[46] It would be fair for one to infer from the content and style of the agreement that the parties merely reached a compromise which sought to settle the dispute that was occasioned by failure to pay the applicant's fees, due to non-payment by the RAF. In *Van Reenen Steel (Pty) Ltd v Smith NO and Another*,²³ the court reasoned that a settlement agreement had a final and binding effect, because the motivation for the parties involved would have been to settle their dispute and or prevent litigation. Therefore, one should be cautioned against easily setting aside such agreements on reasons that are not informed by either lack of consent or apparent error on the part of the parties.

[47] The respondents also averred that they stopped working for the RAF in February 2019, but they were still owed monies by the RAF. They acknowledged that the applicant was among counsel that were not paid due to the delays at the RAF. In January 2020, upon receipt of outstanding invoices from the applicant, they conducted an audit on 32 such matters. On 6 September 2021, the respondents learned that the applicant had submitted his invoices directly to the RAF. On 22 April 2022, this exercise revealed that the applicant had already been paid in 18 of those matters. On 3 November 2022, the respondents received an enquiry for outstanding payments on

²³ 2002 (4) SA 264 (SCA).

15 matters. According to them, although they still owed monies to the applicant, the amount claimed was still a subject of dispute between them.

[48] The respondents alleged that in some instances, the applicant had submitted two different accounts for the same matter at different times. As a point of reference, the respondents sampled two matters. Such matters were, Leonora Bianca Adams,²⁴ where the applicant allegedly submitted invoices for October 2018 and April 2022 with different figures, and Malabo James Mokgadi, which the applicant attended to on 7 August 2018. However, the applicant would not respond to rebut nor confirm such allegations. In my respectful view, in these proceedings, the court was not called upon to make any finding on these allegations. Furthermore, in the absence of evidence to support such allegations, one finds no basis to make findings and conclusions on the veracity of such allegations.

[49] Upon close examination of the relationship between the parties, they clearly enjoyed a mutually beneficial business relationship over a period of four years. They had an understanding on how briefs were sent and accepted and how payments would be made for services rendered. This fact is evident in the settlement agreement in which the applicant accepted payment of R 170 000 as part payment of his fees, and the letter in the matter of *Ngobese Albert Mandla v RAF Case No. 06345/2014*, dated 10 February 2018.

[50] The dispute arose when the applicant got agitated for payment outside the standing agreement and the longstanding terms of engagement. The applicant has not provided any basis upon which it should be permissible for him to resile from the settlement agreement. The applicant has also not established grounds upon which the longstanding manner of engagement should be abandoned or set aside in favour of compliance with the provisions of the LPC Code of conduct on how he ought to have engaged with the respondents. There has been no credible evidence to suggest that the applicant was not a willing participant or that he was coerced in the manner in which he engaged with the respondents. From the discussion above and the evaluation of the evidence, with the application of relevant legal principles, the applicant has failed to establish a case that entitled him to the relief sought under Part A of the notice of motion.

²⁴ Third and fourth respondents' opposing affidavit, para 23.13.

[51] The applicant has fallen short of establishing the respondents' alleged breach of the Rule 7.8. of the General Council of the Bar of South Africa: Uniform Rules of Professional Conduct, which prohibits the instructing attorney and counsel from agreements that counsel would await payment of the fees payable on that brief until the attorney shall have received them from the lay client.

Costs

[52] The respondents argued for a punitive costs order. One carefully engaged with their arguments in the exercise of judicial discretion. I carefully considered the substance of the submissions from both parties, the nature of the dispute that informed the application and the prevailing circumstances of the RAF, which were common cause. The cumulative effect of all matters involved, including the conduct of the applicant throughout the litigation process. It appears that this application was lodged out of desperation and no malice on the part of the applicant. The respondents seemed to acknowledge that the applicant was experiencing financial hardships when they paid him the R170 000.

[53] In my view, the costs in the ordinary norm should suffice in the circumstances as punitive costs are not warranted. The costs on a party and party on Scale C are justified.

Order

[54] The following order is made:

1. Therefore, the respondents' application for condonation for the late filing of their heads of arguments in the main application is granted.
2. The point *in limine* raised by the respondents on the non-joinder of the RAF is upheld.
3. The point *in limine* raised by the respondents, namely, *lis pendens* is upheld.
4. The point *in limine* raised by the respondents, namely, *Irregular notice of motion: non-compliance with Rule 6(5)(b)(i) & (iii)* is upheld.
5. The application in terms of the notice of motion is dismissed with costs. Such costs to include reasonable costs of counsel on scale C.



W. SIPUNZI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the applicant:

In person

For the third and fourth respondents:

Mr. Maharaj

Instructed by:

Dev Maharaj Incorporated

Date of hearing: 22 May 2024

Date of judgment: 26 August 2024