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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 59852/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: 17 SEPTEMBER 2024

SIGNATURE:

In the matter between: -

ELIZABETH MARGARIETHA JOHANNA GREYLING

Plaintiff

(ID: 8[...])

And

WERNER JACOBUS MEIRING

First Defendant

(ID: 8[...])

DRAINSURE (PTY) LTD t/a DRAINSURE PLUMBING

Second Defendant

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 17 SEPTEMBER 2024.

JUDGMENT

COLLIS J

INTRODUCTION:

[1] The Plaintiff has instituted three claims against the Defendants. All three claims stem from verbal contractual agreements between the Plaintiff and the First Defendant. On its part the First Defendant has also instituted one counterclaim.

[2] It should be mentioned that during the trial the First Defendant had made an election not to proceed with the Counterclaim.

[3] The three contractual claims pursued by the Plaintiff emanates from three verbal agreements between the parties with the following terms:

3.1 Claim 1 is for the repayment of a loan advanced by the Plaintiff to the First Defendant, for the business of the Second Defendant.¹ In respect of this claim, the First Defendant admits that the Plaintiff loaned money for the business of the Second Defendant but disputes that any money is still owing.²

3.2. Claim 2 instituted by the Plaintiff is for the repayment of monies spent towards planning for their wedding. The parties were engaged and the Plaintiff

¹ Paragraphs 5 to 17 of the Particulars of Claim – Caselines pages 002-5 to 002-7

² Paragraphs 4 and 5 of the Plea – Caselines pages 002-20 to 002-25

claims from the First Defendant, 50% of the expenses incurred by her. Consequently, she is holding him liable for 50% of the damages that she would not have incurred if the wedding had proceeded. The wedding was called off a month before it was due to take place. Initially it was the Defendants' contention that he did not deny the wedding expenses incurred, but denies being liable for 50% of the costs.

3.3 In respect of Claim 3 instituted by the Plaintiff, she claims that she was employed by the Second Defendant and entitled to a salary. In this regard she claims that she was employed by the Second Defendant from January 2021 to April 2021 with a salary of R24 000.00 per month and she is claiming her salary for the entire period. In support for this claim the Plaintiff places reliance on an employment letter issued by the Second Defendant to her.

DEFENCES

[4] In respect of the loan the Defendant does not deny that the parties had exchanged certain sums of money between themselves, evidencing the characteristics of a loan and loan repayments in relation to the business of the Second Defendant.

[5] The Defendants do however dispute the terms of such loan, specifically the date and amount thereof. The amount that has to be repaid as claimed by the Plaintiff is also placed in dispute.

[6] The second claim as mentioned, stems from the parties' engagement which had been called off. The Plaintiffs' evidence in this regard is that the First Defendant verbally agreed to be liable for half of the wedding costs and she is claiming half of the wedding costs that she could not recover after the wedding was cancelled.³

³ Paragraphs 18 to incorrectly numbered 16 of Particulars of Claim – Caselines pages 002-7 to 002-8

[7] The First Defendant denies having ever agreed to be liable towards 50% of the wedding costs. In light of the fact that this was a verbal agreement, one party's word can only be measured against that of the other party, subject to disputes over interpretation.

[8] In regards the Plaintiff's third claim for salary due to her, the Defendants deny that the Plaintiff was ever employed by the Second Defendant and accordingly it is the Defendants' case that she cannot claim a salary from them.

Claim 1 – Loan:

[9] In respect of the loan amount the Plaintiff testified that the First Defendant approached her for a loan to which she agreed and that she paid the loan in instalments into the Second Defendant's bank account for the business of the Second Defendant.

[10] It is not denied that the monies were paid to the Second Defendant and the First Defendant admitted that the repayments of the loan were made from the Second Defendant's bank account.

[11] In respect of this claim, the main dispute between the parties is whether the amount of R84 199.99 is still owing by the Defendants. The Defendants maintain that the amount of R84 199.99 should be set-off against payments allegedly owed by the Plaintiff for rent and for alleged legal costs incurred to defend the actions in the Magistrate's Court.

[12] The parties were referred to the schedule provided by the Defendants in their Plea⁴ and the Plaintiff stated that she is in agreement with the schedule, apart from the payments that the First Defendant wishes to subtract for alleged rent and legal costs for the actions instituted in the Magistrate's Court.

⁴ Paragraph 5.1 of the Plea – Caselines pages 002-22 to 002-25

The 24 Berrylands Property:

[13] The Defendants' schedule provides that a total amount of R15 500.00 should be set-off against the loan for rental allegedly owed by the Plaintiff to the First Defendant at a property known as 24 Berrylands.

[14] From the evidence led in this regard, it is common cause that the Plaintiff was not a signatory to the 24 Berrylands lease. The Plaintiff contends that she never resided at 24 Berrylands and that it was the First Defendant's residence. The First Defendant first stated that the Plaintiff would sleep over occasionally and then maintained that the Plaintiff resided with him at 24 Berrylands.

[15] The First Defendant made reference to the rental contract⁵ signed by the parties for the property they rented together and known as Club Nautique, where the joint address provided for the parties was 24 Berrylands. The Plaintiff maintained that the 24 Berrylands property was never her residence and it was never agreed that she would pay rent for the property.

[16] The First Defendant did not lead any evidence in support of his contention that it was in fact agreed that the Plaintiff would pay rent for the 24 Berrylands property. The First Defendant further admitted that it was never agreed that the rental amount could be set-off against the loan amount.

[17] He further did not institute a Counterclaim for such rental allegedly owed by the Plaintiff. In the absence of a counterclaim for the rental at the 24 Berrylands property, the First Defendant cannot claim such rental and cannot claim set-off of such rental.

The Club Nautique Property:

⁵ Club Nautique Rental Agreement in Trial Bundle – Caselines page 008-115

[18] In the Defendants' Plea, the Defendants seem to claim that a total amount of R50 074.00 should be deducted from the loan for alleged rental owed by the Plaintiff for the Club Nautique property for the period of November 2021 to May 2021.⁶

[19] During her testimony it was admitted by that Plaintiff that she had agreed to pay half of the rental at the property and that she had in fact not done so. Her version was that as she had resigned from her employment in order to be employed by the Second Defendant, and as such, she was reliant on her salary to pay such rent. As she never received a salary from the Second Defendant, she was therefore unable to pay such rent.

[20] The Plaintiff further testified that it was never agreed that the arrear rental could be set-off against the loan.

[21] In this regard the First Defendant testified, that the Plaintiff did in fact make payments towards the lease in the amounts of R6 200.00, R7 000.00, R5 000.00 and R70 000.00 but that the first three payments made by the Plaintiff, which she stated was for the loan to the Second Defendant were in fact payments made for the rent for the Club Nautique property. The First Defendant also testified that the R70 000.00 paid by the Plaintiff on 18 February 2021 was also not part of the loan advanced by her, but rather that it was Plaintiff's 50% contribution towards rent and electricity/utilities for ten months in advance.⁷

[22] This version as testified to by the First Defendant, i.e. the version of set-off was however not pleaded by him and is contrary to correspondence directed by his attorney on his behalf to the Plaintiff's attorney which specifically states that the payments were made in terms of the loan. This was further the Defendants pleaded case, where it was pleaded that all amounts paid by the Plaintiff were in respect of the loan.⁸

⁶ Paragraph 5.1 of the Plea – Caselines page 002-24

⁷ Note that the Lease Agreement was scheduled to terminate only on 1 January 2022.

⁸ Plea: Paras 4.1:4.2 – P002-20.

[23] Notwithstanding what was put to him, the First Defendant was steadfast in his denial and maintained that the payments so made were made towards the payment for rent.

[24] The version so testified to by the First Defendant is completely improbable if one considers the inconsistencies. This version so testified to, is also not his pleaded case before the Court on point and in the absence of an amendment to his Plea, it cannot be said that it supports his pleaded case. It is trite that parties are bound by their pleadings.⁹

[25] When the First Defendant was asked how the Plaintiff would contribute towards rental considering that she was not employed at the time, the First Defendant testified that upon resigning from her previous employment, the Plaintiff had put in a claim for a Retirement Annuity registered in her name to be paid out in due course. On his version she would then use this money to contribute towards the Club Nautique rent.

[26] This version as testified to by the First Defendant is further improbable as no person can rely on a retirement payout as income to pay rental, in circumstances where the amount of payment and the date of payout remains uncertain and where rental is expected to be paid monthly.

[27] In the absence of the evidence presented by the First Defendant in support of his pleaded case, this Court cannot find in favour of the First Defendant in respect of Claim 1. Accordingly, I am satisfied that the Plaintiff has discharged her *onus* and is to be awarded this Claim.

Claim 2-Wedding Expenses

[28] In this regard, the Plaintiff testified that when she got engaged to the First Defendant, it was agreed that they would each pay half of the wedding costs. She

⁹ Imprefed (Pty) Ltd v National Transport Commission 1993 (3) SA 94 (A) at 108D-E

testified that her father had passed away and that her mother had no money with which to assist them financially.

[29] In this regard, it was her testimony that in preparation of the wedding she incurred the following expenses, namely:

29.1 Venue costs– R20 500.00

29.2 Décor and Flowers – R10 000.00

29.3 Wedding makeup – R1 800.00

29.4 Gowns and slippers – R1 600.00

29.5 Wedding dress material – R 6 900.00

29.6 Wedding cake – R 2 990.00

29.7 Bridesmaids' dresses – R700.00 and that she will only claim from the First Defendant 50% of the wedding costs incurred.

[30] The Plaintiff in addition and in support of this claim, had called her mother who testified that she had spoken to both the Plaintiff and the First Defendant and explained that she did not have any money to assist them with any wedding expenses traditionally expected and that they would need to pay for the wedding on their own. Furthermore, she testified that the policies that were left to her by her late husband would only pay out in five years' time and as such that she had no money to assist them.

[31] In respect of this claim, the version of the First Defendant was also contradictory. Firstly, it was his version that he had offered to pay half of the wedding expenses but that the Plaintiff insisted to pay for the wedding herself. This version was however never put to the Plaintiff and she could not comment thereon.

[32] It however is a version that is simply improbable. No woman about to be married, would carry all wedding expenses by herself, when the whole notion of a wedding is to bring two persons together for them to start sharing a life, including expenses incurred to commence such union.

[33] A further version presented by the First Defendant on point was that he does not deny that the wedding expenses were incurred by the Plaintiff, but rather that he himself had paid for more than half of the expenses incurred. This assertion so made by the First Defendant, was also not supported by any documentary evidence presented by him as proof that payment(s) were in fact made by him. Absent this documentary proof presented by him, this Court would find it difficult to give credence to such version, this notwithstanding the fact that this version is at variance to his initial version presented before this Court.

[34] Consequently, this Court is satisfied that the Plaintiff has discharged her *onus* in respect of the wedding expenses incurred in the amount of R20 945.00.

Claim 3-Salary

[35] In respect of the Plaintiffs' claim for salary owed to her, she testified that she was employed by the Second Defendant from the 1st of January 2021 to the end of April 2021 for a monthly salary of R24 000.00. She testified that as part of her employment she managed the First Defendant's social media as well as debt collections and that she worked full days.

[36] In support of her claim the Plaintiff referred to a letter written by the First Defendant on behalf of the Second Defendant to the bank whereby her employment was confirmed.¹⁰

[37] This letter provides that the Plaintiff is a temporary employee and that she would receive a monthly salary of R24 000.00 from May 2021.

[38] In this regard it was her testimony that it was agreed between the parties that she would be paid R24 000.00 from the 1st of January 2021 as that is when her

¹⁰ Second Defendant's letter to the Bank – Caselines 008-62

employment started and that the First Defendant provided her with the letter in order for her to get a loan to support the Second Defendant.

[39] In respect of this claim, Mr. Meiring, in his Plea denied that the Plaintiff was ever employed by the Second Defendant, however during his testimony he gave evidence that the Plaintiff was temporarily employed as provided for in his letter to the bank. This evidence is not as per his pleaded case and neither was the Plea of the Defendants ever amended.

[40] During cross-examination, the First Defendant was directed to a letter from his attorney¹¹ where it was again admitted that the Plaintiff was employed by the Second Defendant. The testimony therefore advanced by the First Defendant that the Second Defendant never had the financial means to employ the Plaintiff is therefore contradictory to the letter directed by his attorney.

[41] The Plaintiff having been temporarily employed by the Second Defendants firm, it follows, that at the very least on his version that the Plaintiff ought to have been earning a salary for the work performed by her and further only having earned a salary, she would have been able to carry her expenses. Absent the earning of any remuneration, it follows that she would have found it difficult to meet her responsibilities.

[42] On the probabilities therefore, this Court accepts that the Plaintiff was indeed employed by the Second Defendants' firm and is owed the amount of salary due for the period in question. More so in the absence of any rebuttal evidence being presented by him.

[43] Consequently, the Plaintiff in respect of this claim, is awarded payment in the amount of R96 000.00.

Costs

¹¹ Letter from Defendants' attorney – Caselines 008-138

[44] As per the Plaintiff's pleaded case she seeks costs of a Party and Party High Court scale, this notwithstanding that her monetary claims fall within the Magistrates Courts jurisdiction.

[45] In support of being granted this scale of costs, she presented the evidence of her instructing attorney, Ms. Du Plessis who testified that the first action which was instituted in the Randfontein Magistrates Court, was in fact an error on their part and as such they paid the Defendants' taxed costs incurred.

[46] The special plea filed by the Defendants in the Randfontein case, provided their registered address as an address in Randburg.¹² This Plea however did not set out the First Defendant's address. She thereafter conducted a search of the Companies and Intellectual Property Commission's (hereinafter referred to as "CIPC") database, which showed that the Second Defendant's registered address was located in Central Johannesburg.¹³

[47] In order to ensure that they issue further proceedings out of the correct court, correspondence was directed to the Defendants' attorneys requesting the First Defendant's address as well as whether the Second Defendant's registered address would be changed.¹⁴

[48] The said attorneys refused to provide an address in respect of the First Defendant nor give an undertaking in respect of the Second Defendant.

[49] Ms. du Plessis further testified, that in light of the fact that they did not know where the First Defendant lived and that the whole cause of action did not arise within one province, they decided to follow the Second Defendant's registered address as that would also be the First Defendant's employment address.

¹² Defendants' Special Plea in Randfontein – Caselines page 008-172

¹³ CIPC search dated 8 November 2021 – Caselines 008-184

¹⁴ Letters from the Plaintiff's Attorney – Caselines pages 008-182 and 008-188

[50] Summons was as a result issued out of the Johannesburg Central Magistrates Court and a special plea was again filed by the Second Defendant claiming its registered address is in Randburg.¹⁵ Pursuant thereto, Ms du Plessis again consulted the CIPC's database and found that the Second Defendant had changed its registered address to its attorney's address in Krugersdorp after they received the letter requesting whether the address would be changed.¹⁶

[51] The action was again withdrawn, but as it was clear that the Second Defendant had deliberately changed its registered address, they decided to use the address as provided for in the Special Plea and issued out of the Randburg Court.

[52] This action was similarly withdrawn after service could not successfully be made. The sheriff's return¹⁷ clearly indicated that the Defendants had left the property. Should the matter have continued on an unopposed basis it would be unlikely for the Plaintiff to be successful in light of the sheriff's return of non- service.

[53] Ms. Du Plessis further testified that instead of continuing with the action in Krugersdorp with the risk of the Second Defendant again changing his registered address prior to the action being served, the Plaintiff decided it would be more cost effective to continue in the High Court, hence the relief to seek costs on a High Court scale.

[54] On behalf of the Plaintiff it was therefore argued, that the Defendants at all times knew the Plaintiff's intention to serve on the Second Defendant's address and that same was deliberately changed. They provided an address in their special plea for the Second Defendant that was not being used by the Second Defendant.

¹⁵ Special Plea in the Johannesburg Court – Caselines page 008-211

¹⁶ CIPC search on 9 September 2021 – Caselines page 008-226

¹⁷ Sheriff's return – Caselines page 008-246 and 008-247

[55] It is as a result of this action, that the Plaintiff had no option but to continue in the High Court, preventing the risk of the Defendants evading the court's jurisdiction again.

[56] Further that the Plaintiff could not use the address of the First Defendant, as they firstly did not know where the First Defendant resided, and further in the absence of reliance of the whole cause of action arising out of one magisterial district, she had no choice but to institute proceedings out of the High Court.

[57] On behalf of the Defendants it was submitted that although the High Court has concurrent jurisdiction to entertain monetary claims falling within the jurisdictional limit of the Magistrate's Court, the action should never have pursued out of the High Court as this has caused both parties to incur unnecessarily high legal fees, which could have been avoided.

[58] It is for this reason that the Defendants had pleaded that costs in this action should be paid by the Plaintiff on a punitive scale, considering that the monetary amount claimed falls within the jurisdiction of the Magistrate's Court.¹⁸

[59] Further, albeit that the Plaintiff claimed that she was forced to institute this action out of the High Court, as a result of the First Defendant's failure to voluntarily disclose his residential address and the Second Defendant's registered address which kept on changing,¹⁹ there was no such obligation on the Defendants to assist the Plaintiff with these addresses. As the Defendants at all times were represented by an attorney, the Rules²⁰ of the Magistrates Court provided for service to be affected on the attorney.²¹ This manner of service was not elected by the Plaintiff.

[60] A Court has a discretion in awarding the appropriate costs order to a successful litigant. In *casu* no explanation has been given as to the reason why service of the

¹⁸ Plea: Para 3 – P002-20.

¹⁹ PoC: Paras 30:32 – P002-9.

²⁰ MCR9(3)(h) & R9(3)(j).

²¹ See first Email from Defendants' attorney dated 23 May 2021 – P008-138.

initiating documents was never affected, on the legal representative of the Defendants in circumstances where it was known to the Plaintiff that the Defendants were legally represented.

[61] In exercising my discretion, I am of the view that absent such explanation and given the fact that the Plaintiff's monetary claim falls within the Magistrates Court jurisdiction, the Plaintiff being the successful party should only be awarded costs on a Magistrates Court scale.

Counterclaim

[62] As mention *supra*, the First Defendant at the commencement of the hearing had indicated that it will not persist with its Counterclaim. This was done after the commencement of the proceedings and not prior. As such the Defendants' presented no evidence in respect of its Counterclaim.

[63] The evidence however presented by the Plaintiff was to the effect that the Plaintiff's attorneys had paid an amount of R3 529.77 of the Bill of Costs into the bank account of Defendants' attorneys in respect of the first action which was instituted.²²

[64] As no further taxed Bills of Costs were presented into evidence, and no evidence lead regarding the amount incurred in defending the other two actions issued out of the Magistrate's Court, the Defendants have failed to discharged their *onus* in respect of the Counterclaim.

[65] Consequently, notwithstanding an indication at the commencement of the proceedings that it would not proceed with its Counterclaim, it will be appropriate for the Counterclaim in the circumstances to be dismissed with costs.

ORDER

²² Proof of Payment – P008-178.

[66] In the result the following order is made:

Claim 1:

66.1 Payment in the amount of R84 199.99 by the Defendants jointly and severally, the one paying the other to be absolved;

66.2 Interest on the abovementioned amount at a rate of 7% p.a. from 31 January 2022 to date of final payment;

Claim 2:

66.3 Payment in the amount of R20 945.00 by the First Defendant;

66.4 Interest on the abovementioned amount at a rate of 7% p.a. from 31 of January 2022 to date of final payment;

Claim 3:

66.5 Payment in the amount of R96 000.00 by the Second Defendant;

66.6 Interest on the abovementioned amount at a rate of 7% p.a. from 31 January 2022 to date of final payment;

66.7 Costs of suit on a Magistrates Court Party and Party scale.

68.8 The Defendants Counterclaim, is dismissed with costs.

C. COLLIS

JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

APPEARANCES

Counsel for the Plaintiff: Adv AM Raymond

Instructed By: Suze Buitendag Attorneys

Counsel for the Defendant: Adv. RP Taljaard

Instructed By: Kapp Attorneys

Dates of Hearing: 08th February 2024
09th February 2024
30th May 2024

Date of Judgment: 17 September 2024