

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 5086/2016

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED/YES/NO

Naude – Odendaal J

SIGNATURE

DATE

19/11/2024

In the matter between:

MMAMOLEBOGE INVESTMENTS CC

PLAINTIFF

and

THE MINISTER, DEPARTMENT OF
PUBLIC WORKS1st DEFENDANTTHE DIRECTOR-GENERAL, DEPARTMENT
OF PUBLIC WORKS2nd DEFENDANT

JUDGMENT

NAUDE–ODENDAAL J:

- [1] The Plaintiff instituted action against the Defendants for payment. The Plaintiff's claim is in a nutshell that the Department of Public Works appointed the Plaintiff for the provision of *ad hoc* maintenance services, over a period of three years. The Plaintiff rendered services to the Defendants and invoiced the Defendants for the services rendered. The Defendants failed to pay the Plaintiff the invoiced amounts and the Plaintiff seeks judgment for the payment of the invoiced amounts.
- [2] The Defendants conceded liability to make payment to the Plaintiff for services rendered on 5 August 2024. The only issue to be determined by this court is the extant of liability.
- [3] On 19 August 2024, the Plaintiff tendered evidence of a single witness, Mr. Samuel Thema. In his evidence, Mr. Thema testified that he was a director of the Plaintiff and had been a director during the period of the contract with the Defendants. He explained that it was the Defendants who commissioned the Plaintiff's services, on an *ad hoc* basis, and further testified that the Plaintiff invoiced the Defendant for such services.
- [4] Mr. Thema referred to the invoices which were rendered pursuant to the rendering of services, and the bundle of invoices was handed in as Exhibit A. The total amount of the outstanding invoices according to the Plaintiff is R1242035.64 (One Million, Two Hundred Forty Two Thousand and Thirty Five Rand, Sixty Four Cents.), as per the Plaintiff's Heads of Argument, although the Particulars of Claim stated an

amount of R1245035,64 (One Million, Two Hundred Forty Five Thousand And Thirty Five Rand, Sixty Four Cents).

- [5] The Plaintiff's witness was not cross-examined and thus the evidence by the Plaintiff's witness stands undisputed. The Defendants further failed to put any version or intended evidence by the Defendants, to the Plaintiff.
- [6] The Defendants in their plea simply denied that any agreement was ever concluded with the Plaintiff and further that if there were ever any services supplied by the Plaintiff as alleged, such services were not sanctioned by the Defendants and consequently no invoices for payments could have been delivered to the Defendants. The Defendants denied owing the Plaintiff any amount of money.
- [7] Only during trial did the Defendants raise an entirely new defence, which was not pleaded and which defence or version was not put to the Plaintiff during cross-examination either. The Defendants submitted that they acknowledge that they owe the Plaintiff an amount but the amount is far less than what is submitted on behalf of the Plaintiff. According to the Defendants the amount due and owing is R315 931.92 (Three Hundred and Fifteen Thousand, Nine Hundred and Thirty One Rand, Ninety Two Cents.)
- [8] The Defendants for the first time during the Defendants case, through the witness for the Defendants, Mr. Mokwetle, attempted to rely on an Internal Memorandum of the Department of Public Works. This Internal Memorandum was not discovered by the

Defendants and as already stated not pleaded either, despite being date stamped by the State Attorney on 5 June 2019. The Defendants submitted that according to the Internal Memorandum, there were some invoices rendered that needed rectification, or was not compliant in all aspects and therefore could not be paid, although the Defendants are still willing to pay these invoices and tenders payment thereof if rectified. Absence rectification, the Department only owes the Plaintiff an amount of R315 931.92.

[9] In **Robinson v Randfontein Estates GM Co Ltd 1925 AD 173 at 198** the court held that: "The object of pleading is to define the issues; and parties will be kept strictly to their pleas where any departure would cause prejudice or would prevent full inquiry. But within those limits the court has a wide discretion" – for pleadings are made for the court, not the court for pleadings.

[10] Identifying the issues informs the other party of the case they must meet, or the relief sought. The duty of the court is to adjudicate on those disputes. A pleading is the foundation of the case a party intends to make on trial. If the foundation is weak, the case is going to be weak.

[11] In an article published in the ***De Rebus, April 2024 Dr 6***, it was stated that (and I deem it necessary that parties be reminded of the importance of pleadings):-

"A pleading is like a love letter, except that it is aimed at a counterparty. It says something of the author and their approach to the dispute. It reveals more of the author and their approach to a matter, than would meet the eye. Take care that your

plea rests on solid foundations. Take care to state issues succinctly and effectively. If not, the author may find themselves to have 'married in haste, but repenting at leisure'."

[12] In the present matter the Defendants made absolutely no foundation for the defence they only during trial sought to raise. The Plaintiff was left in the dark and the Defendants attempted to litigate by ambush. The Defendants had more than 8 years to get their house in order and prepare and plea a proper case. The Defendants filed a plea and had an opportunity to file an amended plea, and nowhere was any of the issues raised during trial, pleaded.

[13] In addition, the Defendants sought to rely for their defence on their own internal memo, which was not discovered by the Defendants, but by the Plaintiffs. In **Ndala v Baloyi and Another [2023] ZAGPPHC 203; 5834/2022 (9 March 2023)** the following was stated at para 13 -14:-

*"[13] The object of discovery is to ensure that before the trial both parties are made aware of all the documentary evidence at the disposal of the parties which in turn assist not only the litigating parties but the court to discover the truth. Discovery affidavits are regarded as prima facie conclusive save where it can be shown that there are reasonable grounds for believing that the other party has the relevant documents or that the other party is false in his or her assertions. See **Federal Wine and Brandy Co Ltd v Kantor 1958 (4) SA 735 (E)** at 749H.*

*[14] In **Swissborough Diamond Mines and Others v Government of the Republic of South Africa 1999 (2) SA 279 (T)** at 320F-H it was held 'Accepting that the onus is on the party seeking to go behind the discovery affidavit, the court, in determining whether to go behind the discovery affidavit, will only have regard to the following-*

- (i) *The discovery affidavit itself; or*
- (ii) *The documents referred to in the discovery affidavit; or*
- (iii) *The pleadings in the action; or*
- (iv) *Any admissions made by the party making the discovery affidavit; or*
- (v) *The nature of the case or the documents in issue.” (Footnotes omitted)*

[14] The author of the internal memorandum has further not been called to testify nor has the Defendant tendered an explanation why not. The evidence contained in the internal memorandum should in my view be regarded as inadmissible.

[15] In my view, the sudden new defence raised only during the Defendants' case at trial, as well as the reliance by the Defendants on the Internal Memo which bears the date stamp of as early as 5 June 2019 by the State Attorney, and which the Defendants only now shortly before trial attempted to re-date to reflect a date of 16 August 2024, should be rejected and disregarded. The Defendants did not act or litigate in good faith or *bona fide* in the present matter, to the prejudice of the Plaintiff for over 8 years. In my view, the parties should be kept strictly to their pleas in the present matter as the departure now sought would cause severe prejudice or would prevent a full inquiry as the Plaintiff has already closed its case. In the result the Plaintiff's claim on the amount claimed, stands to succeed.

[16] As a general rule, costs follow the result. There is no reason to deviate in the present matter from the general rule. The Plaintiff applied for a punitive cost order

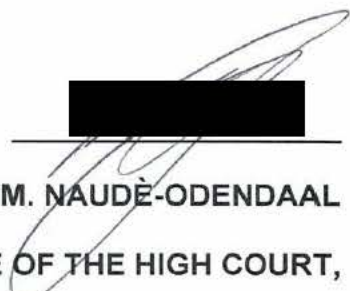
against the Defendants in that it was submitted that the Defendants acted *mala fide* and utilized every possible delaying tactic in order not to finalize the present matter.

[17] I am in agreement with the Plaintiff that the manner in which the Defendants approached this matter and dealt with the litigation leaves much to be desired and should be frowned upon, however, although the Defendants unduly delayed the matter, their conduct is not of such a nature that a punitive cost order will be justified.

ORDER:

[18] In the result, I therefore make the following order:-

1. The Defendants are ordered to pay the Plaintiff an amount of R1242 035.64 (One Million, Two Hundred Forty Two Thousand and Thirty Five Rand, Sixty Four Cents.)
2. Prescribed interest on the amount of R1242 035.64 calculated *a tempore morae* at the rate of 10% per annum to date of full and final payment.
3. The Defendants are ordered to pay the Plaintiff's cost of suit.


[REDACTED]
M. NAUDÉ-ODENDAAL
JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

HEARD ON : 19 AUGUST 2024
HEADS OF ARGUMENT FILED : 13 SEPTEMBER 2024
JUDGMENT DELIVERED ON : 19 NOVEMBER 2024.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be **19 NOVEMBER 2024 at 12h00**

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POLOKWANE HIGH COURT