



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: **D8746/2024**

In the matter between:

MELUSI CHRISTOPHER NTULI

PLAINTIFF

and

THE DEPARTMENT OF SCIENCE AND INNOVATIONS

DEFENDANT

Coram: Mossop J
Heard: 14 May 2025
Delivered: 14 May 2025

ORDER

The following order is granted:

1. The application for summary judgment is refused.
 2. The defendant is given leave to defend the action.
 3. The costs are reserved for decision by the trial court.
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JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex tempore judgment.

[2] The plaintiff applies for summary judgment against the defendant. His particulars of claim are comprised of four separate claims, which, when totalled together, demand payment from the defendant of damages in the amount of R27 billion. As may be expected, the defendant denies that he is entitled to that judgment and seeks leave to defend the action.

[3] The file of papers that comprise the plaintiff's claim for summary judgment runs to some 921 pages, contained in eight separate volumes. The plaintiff has prepared his own papers and appears in person to move for summary judgment.¹ The papers are properly typed and paginated but were initially improperly bound and secured, although a partial attempt has been made by the plaintiff to remedy this.

Uniform rule 32(1)

[4] The Uniform Rules of Court clearly explain under what circumstances a plaintiff may claim summary judgment. The applicable rule is rule 32(1), and it reads as follows:

‘(1) The plaintiff may, after the defendant has delivered a plea, 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.’

Summary judgment

[5] Summary judgment is often viewed as a drastic remedy because it may result in a defendant being deprived of the opportunity to present his defence at a trial. If it is granted, the action proceeds no further. One of the reasons for summary judgment

¹ There is another application in the court file, confusingly entitled ‘Opposed application for leave to oppose the applicant’s rule 30 application’.

was explained by Navsa JA in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* when he observed that the procedure:²

‘... was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights.’

[6] However, Navsa JA presciently went on to remark that:

‘Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are “drastic” for a defendant who has no defence.’³

[7] From the provisions of Uniform rule 32(1), it is therefore apparent that not every claim brought by a plaintiff can legitimately lead to an application for summary judgment. The judgment being claimed must be capable of being classified under one of the four categories prescribed by the rule. If it is incapable of such classification, summary judgment cannot be granted, and the matter must proceed to trial.

[8] Before assessing the merits of the application, it is proper to say something about the plaintiff’s claim.

The plaintiff’s pleaded case

[9] It is, in truth, no easy thing to summarise the plaintiff’s claim. As mentioned at the commencement of this judgment, the plaintiff drew the particulars of claim himself and he confirmed before me this morning when the matter was called that he has no training in the law. That, unfortunately, is reflected in the quality of the pleadings and in his understanding of the law. In saying this, I do not mean to be disrespectful to the plaintiff but mean to simply record the fact that it is palpably obvious that he has ventured into an area that he is not qualified to enter.

[10] The particulars of claim are not excessively long, nor unacceptably short, and cover 12 typed pages. But in attempting to describe what his case is about, the

² *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* [2009] ZASCA 23; 2009 (5) SA 1 (SCA) para 31 (*Joob Joob Investments*).

³ *Ibid* para 33.

plaintiff has liberally made use of jargon and acronyms, whose meaning is not sufficiently explained, and which makes reading and comprehension difficult.

[11] What the claim is about is, perhaps, best explained by the plaintiff's affidavit in support of his application for summary judgment, where he states the following:

'The claims are based on the unconstitutionality, illegality, marketing and infringement of the intellectual property rights (IPRS) due to the Respondents Grassroots Innovation Program (GIP).'

[12] The plaintiff's claim appears to revolve around two devices, namely a 'chargeless electric engine' (the electric engine) and a 'PSDC motor' (the PSDC motor) (collectively referred to as 'the devices'). If I correctly understand the particulars of claim, it appears that he lays claim to having invented the devices. While I can appreciate from the particulars of claim what the electric engine may conceivably be (based entirely upon the words used to describe it), I have no idea what the PSDC motor is. Its nature is never described by the plaintiff, nor does he explain what the acronym 'PSDC' means.

[13] It appears that the plaintiff holds intellectual property rights to the devices, and that the defendant has accepted the use of these devices into its programme called the 'Grassroots Innovation Programme' (GIP). I do not understand what the GIP is, for it has also not been explained. In acting as the defendant allegedly has, it is claimed by the plaintiff that his intellectual property rights have suffered reputational damages. I make no comment on whether an intellectual property right has a reputation and, if so, whether it can sustain reputational damages.

[14] The plaintiff's claim for payment of the amount of R27 billion is comprised of the following claims mentioned here in summary:

(a) The first claim asserts that the GIP is unconstitutional. The result of this is: '... plaintiff's IPRs' have a damaged reputation and have suffered as in the Sum (sic) of R5 billions (sic)';

(b) The second claim alleges that the defendant had 'no legal grounds of using the IPRs' and therefore:

'... the plaintiff's IPRs have a damaged reputation and suffered a loss in the Sum of R2 billions (sic)';

(c) The third claim seems to allege that the defendant was not entitled to promote the electric engine through the GIP because, confusingly:

‘[t]here had never been a Chargeless Electric Engine’s development that ... was ready for the market’.

As a consequence, it is again alleged that:

‘... the plaintiff’s IPRs have been damaged reputation (sic) and have suffered damage in the Sum of R10 billions (sic)’; and

(d) The final claim is that the intellectual property rights that allegedly existed in respect of the PSDC motor were infringed by the defendant and resulted in the destruction of its development and thus:

‘... the Plaintiff’s IPRs have been damaged reputation and has suffered damages in the Sum of R10 billions (sic).’

[15] From this whistle-stop tour through the plaintiff’s claim, it is clear that he seeks unliquidated damages from the defendant. His claim consequently does not fit into any of the categories prescribed by Uniform rule 32(1). A claim is liquidated if it is fixed either by agreement or by an order of court or is capable of swift and easy computation.⁴ There is no such agreement in this instance on the amounts claimed by the plaintiff, nor have the amounts been determined by a court. The claims obviously cannot easily be computed either. Indeed, it is impossible to calculate how the amounts claimed have been arrived at, as no details have been pleaded as to how the amounts claimed have been calculated. Those amounts simply appear in the prayer to the particulars of claim for the first time. In *SA Fire and Accident Insurance Co Ltd v Hickman*,⁵ the court, although dealing with an application for default judgment, addressed the issue of liquidated claims as follows:

‘In the present case, the amount of the claim in issue manifestly cannot be calculated today: it will only emerge after debate of the account has been concluded. It is true that the claim itself is specific enough: but then so is a claim for damages, which, by common consent, constitutes an unliquidated claim.’

This matter does not, however, offer the security of being based upon a claim that is specific and well-drafted.

⁴ *Kleynhans v Van der Westhuizen* NO 1970 (2) SA 742 (A) at 750A-B; *First National Bank of SA Ltd v Myburgh and another* 2002 (4) SA 176 (C) at 181F.

⁵ *SA Fire and Accident Insurance Co Ltd v Hickman* 1955 (2) SA 131 (C) at 133A.

[16] The procedure through which summary judgment is claimed may therefore not be invoked where a claim is not liquidated. As the Supreme Court of Appeal stated in *Economic Freedom Fighters and others v Manuel*:⁶

‘Summary judgment proceedings, regulated by Uniform Rule 32, are limited to claims based on a liquid document, a liquidated amount in money, the delivery of specified movable property, and ejectment. It is not a remedy available in respect of claims for unliquidated damages.’

[17] As the plaintiff’s claim does not fall into any of the categories contemplated in Uniform rule 32(1), the claim has obviously bleak prospects of succeeding. Indeed, with the appreciation of the true nature of the claim comes the obvious realisation that the summary judgment application has reached the end of its short life.

The defendant’s defence

[18] I briefly consider some of the defendant’s defences solely to point out other difficulties that the plaintiff has with his claim.

[19] The fact that the plaintiff’s claim is not a liquidated claim was the first point raised by the defendant. But there are several other equally valid objections to the granting of summary judgment. In fact, there are ten such objections, but I mention only three here:

- (a) This court lacks jurisdiction to deal with the matter as the defendant, on the plaintiff’s own version, is a government department based in Pretoria, Gauteng outside the area of jurisdiction of this court;
- (b) There has been the non-joinder of the relevant minister in control of the defendant; and
- (c) There has been noncompliance with the provisions of the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002.

[20] The defences raised by the defendant are properly raised and pleaded, are bona fide, and cannot simply be considered to have been conjured up purely for the purpose of delaying the inevitable judgment that the plaintiff believes must come his

⁶ *Economic Freedom Fighters and others v Manuel* [2020] ZASCA 172; 2021 (3) SA 425 (SCA) para 92.

way. The application for summary judgment, therefore, holds none of the terrors for the defendant alluded to by Navsa JA in *Joob Joob Investments*.

Conclusion

[21] Summary judgment cannot be granted in this matter.

[22] The legal position has, unfortunately, been misconceived by the plaintiff, who would be well-advised to obtain specialist legal assistance as the action proceeds. As pointed out above when briefly considering the further defences raised by the defendant, the plaintiff may reasonably anticipate further difficulties in his path as this matter unfolds. It seems to me that it would be beneficial for him if he acquires legal advice to help him deal with the difficulties that he is inevitably going to face. If he cannot afford such assistance, I have arranged for my registrar to provide him with the local address of Legal Aid South Africa once the court rises.

[23] But, as for this application, the usual order must be granted when summary judgment is refused.

Order

[24] I accordingly grant the following order:

1. The application for summary judgment is refused.
2. The defendant is given leave to defend the action.
3. The costs are reserved for decision by the trial court.

MOSSOP J

CASE INFORMATION

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In person

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