



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES NO
(2)	OF INTEREST TO OTHER JUDGES: YES NO
(3)	REVISED.
<u>18/6/2025</u>	
	

Case No: **049420/2023**

In the matter between:

RUTH MUDAU

Plaintiff/Applicant

and

BRIAN RAMABOA INCORPORATED

First Defendant/First Respondent

BRIAN RANGWEDI RAMABOA

Second Defendant/Second Respondent

JUDGMENT IN THE SUMMARY JUDGMENT APPLICATION

J.F. GROBLER, AJ

- [1] Ruth Mudau, a practicing advocate, claims summary judgment against the First Defendant, a personal liability company and firm of attorneys, and the Second Defendant, the director of the First Defendant, in respect of outstanding invoices for services rendered.
- [2] The Plaintiff attached 90 (ninety) invoices and a statement of account which was alleged to set out the full indebtedness of the Defendants to the Plaintiff. The invoices and statement of account is for a total amount of R967,760.00.
- [3] The Defendants' Plea, both before and after an amendment thereof, does not dispute¹ the Plaintiff's allegations, *inter alia*, that:
- [3.1] the relationship between an attorney and advocate is governed by the Legal Practice Act, 28 of 2014, and the code of conduct for all legal practitioners;
 - [3.2] the Plaintiff and the First Defendant entered into a partly written, partly oral agreement subject to the provisions of the Legal Practice Act and Code of Conduct;
 - [3.3] the Defendants are liable for the fees charged by the Plaintiff;
 - [3.4] the Plaintiff would perform the instructions at an agreed hourly rate / day fee as set out in the invoice;

¹ Some allegations have been admitted and some allegations have been noted.

- [3.5] payment in respect of invoices would be made once payment is received by the Defendants from its clients (the Road Accident Fund);
 - [3.6] the Defendants shall pay timeously the reasonable charges of the Plaintiff;
 - [3.7] the Defendants shall ensure either that it has sufficient funds in its trust account to be able to pay for the services of the advocate, alternatively the Defendants shall ensure that the necessary funds to pay for the services of the advocate are timeously collected from the client to ensure that payment could be and is effected either within agreed time or a reasonable period of time;
 - [3.8] the Plaintiff is not privy to the relationship and financial interactions of the Defendants and their client (the RAF);
 - [3.9] the Plaintiff is never responsible to ensure that funds are timeously obtained by the Defendants from their client; and
 - [3.10] the Defendants remain the responsible parties who are obligated to ensure that payments in respect of the invoices are made to the Plaintiff.
- [4] Furthermore, the Defendants admitted that the time period for payment of the Plaintiff's invoices deviate from the standard time periods for payment in that the Plaintiff agreed that payment in respect of the invoices would be made once payment is received by the Defendants from their client.

- [5] The Defendants filed a Special Plea of Prescription and alleged in the Plea, both before and after an amendment thereof, that certain payments were made to the Plaintiff, which were not reflected in the Plaintiff's statement of account of outstanding invoices. The Defendants defence is accordingly based upon material facts alleged by the Defendants relating to prescription and payments that were made.
- [6] I will consider the material facts relating to the defence of payment first and I will consider the Special Plea of Prescription thereafter.

The plea of payment:

- [7] The Defendants pleaded in paragraph 13 of the plea dated 20 June 2023 (i.e. before an amendment was effected) that the Plaintiff failed to reconcile the outstanding invoices with payments made and was claiming invoices that had already been paid. The Defendants alleged that its records showed that payments in respect of 62 (sixty two) of the 90 (ninety) invoices attached to the Particulars of Claim had been made by the Defendants. The Defendants specifically pleaded that some of the proof of payments could not be located and attached no proof of the alleged payments to the Plea. The Defendants at this stage accordingly relied purely on the unsubstantiated allegation that its records showed that payments had been made.

- [8] The Defendants pleaded in the amended paragraph 13, which was effected by the delivery of amended pages filed under cover of a Filing Notice served on the Plaintiff's attorneys of record on 17 April 2024, that payments were made to the Plaintiff by way of cheques and the Defendants attached proof of payments by cheque to the amended Plea as per Annexures "RM1" to "RM20" (a total of 56 (fifty six) cheques). The Defendants did not allege in the amended Plea that further proof of payments are outstanding and alleged no further facts upon which the claim of the Plaintiff was disputed.
- [9] The Plaintiff filed a Notice of application for summary judgment, and an affidavit in terms of Rule 32(2) of the Uniform Rules of Court. In the affidavit supporting the application for summary judgment dated 7 July 2023 (i.e. before the Defendant's Plea was amended), the Plaintiff stated that the claim against the Defendants is persisted with *"save for acknowledging that payment in the amount of R146,100.00 (ONE HUNDRED AND FORTY SIX THOUSAND ONE HUNDRED RAND) had been received from the Defendants"*. The Plaintiff claimed the reduced amount of R821,660.00 in the Notice of application for summary judgment. The Plaintiff furthermore in the affidavit confirmed a willingness to concede any payment made by the Defendants upon receipt of sufficient proof thereof.

- [10] It is trite law that defendants opposing a claim for summary judgment on affidavit on the basis of having a *bona fide* defence, must “fully” disclose the nature and grounds of the defence and the material facts upon which it is founded and they must show that they have a defence which is both *bona fide* and good in law on the facts so disclosed.²
- [11] In the Defendants’ first affidavit opposing summary judgment dated 7 August 2023 (before the Plea was amended as referred to above), Mr MB Mopai on behalf of the Defendants stated that the Defendants’ records showed that payments were made in respect of certain of the invoices attached to the Plaintiff’s particulars of claim and he furthermore stated that some of the Plaintiff’s invoices were submitted to the RAF for payment, but that the Defendant still awaits payment thereof and that payment will be made to the Plaintiff upon receipt of payment from the RAF and according to the RAF tariff.
- [12] In the Defendants’ supplementary affidavit opposing summary judgment dated 28 March 2024 (after the Plea was amended as referred to above), Mr MB Mopai on behalf of the Defendants stated that the supplementary affidavit is deposed to “*in addition to and in rectification of*” the initial affidavit. Mr Mopai stated that the Defendants obtained proof of payment of some of the invoices attached to the Plaintiff’s particulars of claim (Annexures “RM1” to “RM20”), which were again attached to the affidavit as annexures.

² *Maharaj v. Barclays National Bank Ltd*, 1976(1) SA 418 (A) at 426 A to F.

- [13] The Defendants accordingly utilised the opportunity to scrutinise its records and investigate the Plaintiff's allegations of non-payment. The Defendant was able to obtain proof of payment of some of the invoices and presented such to the court.
- [14] I consider it significant that the Defendants, having had the time and opportunity and the benefit of further investigation, did not state in the supplementary affidavit that they followed up with the RAF and made enquiries about the balance of the outstanding invoices. The deponent of the Defendants' supplementary affidavit did not state that the Defendants had not yet received payment of the balance of the outstanding invoices from the RAF and he did not state that the Defendants complied with the terms of its agreement referred to in paragraph [3.5] to [3.10] above. One would have expected the Defendants to state the abovementioned obviously material facts in the supplementary opposing affidavit - if the Defendants, cognisant of the requirement to satisfy the court on affidavit that it had a *bona fide* defence, wished to rely on those material facts.
- [15] I also consider it significant that the Defendant did not allege in either the amended Plea, or in the supplementary opposing affidavit that the Plaintiff agreed to accept a reduced fee in full and final settlement of the invoices according to the RAF tariff. As stated above, one would have expected the Defendants to plead the aforementioned material facts specifically in the amended Plea and to confirm it unambiguously under

oath in the supplementary opposing affidavit - if the Defendants wished to rely on those material facts.

[16] The Plaintiff requested at the hearing of the summary judgment application that summary judgment be granted against the Defendants in the amount of R277,720.00. The aforesaid amount is the balance due to the Plaintiff after the total of the amounts of payments made with Annexures "RM1" to "RM20" attached to the Defendant's amended Plea and supplementary opposing affidavit is deducted from the total amount claimed in the particulars of claim.

[17] Ms. Strydom, on behalf of the Plaintiff, submitted that the sum total of the cheques attached to the Defendant's amended Plea and supplementary affidavit (Annexure "RM1" to "RM20") was deducted from the amount claimed in the Particulars of Claim and that the Plaintiff therefore gave the Defendants the benefit of all the payments. Ms. Strydom submitted that the Defendants accordingly, as far as the defence of payment is concerned, have no *bona fide* defence against payment of the balance of the Plaintiff's claim in the amount of R277,720.00.

[18] Mr. Mopai, who appeared on behalf of the Defendants at the hearing of the summary judgment application, was constrained to concede that the Defendants had not disclosed a defence on the papers in respect of the balance of the claim to the amount of R277,720.00.

[19] I accordingly find that the Defendant failed to disclose a *bona fide* defence to the balance of the Plaintiff's claim in the amount of R277,720.00 and that the Plaintiff is, subject to the determination of the Special Plea of Prescription below, entitled to summary judgment in that amount.

The Special Plea of Prescription:

[20] The Defendants raised a special plea of prescription, stating that the Plaintiff submitted invoices to the Defendants dated 2012, 2013, 2014 and 2015 and that Summons "*was issued out on the 25th May 2023, being more than three years after the date on which the Plaintiff's cause of action arose as envisaged by the Prescription Act, 68 of 1969, Section 11(d).*"

[21] The Defendants' plea of prescription is ill-conceived. It fails to recognise an undisputed term of the agreement between the parties. Paragraph 7.6 of the Particulars of Claim specifically refer to the fact that payment in respect of the invoices rendered by the Plaintiff to the Defendants would be made "*once payment is received by the Defendant from its client*". Payment of the invoices were due to the Plaintiff once the Defendants received payment from the RAF.

- [22] Section 12(1) of the Prescription Act provides that prescription on a debt shall commence to run as soon as the debt is due. The debt accordingly became due and prescription commenced only once payment was received by the First Defendant from the RAF.
- [23] The Defendants did not plead or state under oath when payment in respect of the invoices were received by the Defendants and accordingly failed to plead or state under oath when prescription commenced in respect of the invoices.
- [24] It is trite law that the party who raises prescription must allege and prove the date of the inception of the period of prescription.³
- [25] The Defendant's special plea of prescription accordingly does not constitute an answer to the Plaintiff's claim.

Costs:

- [26] The Plaintiff sought a punitive costs order on an attorney and client scale against the Defendants. On the other hand, the Defendants sought a punitive costs order on an attorney and client scale against the Plaintiff.
- [27] It is concerning that the Plaintiff failed to record all the payments received from the Defendants on the statement of account which was attached to

³ *Gericke v. Sack*, 1976(1) SA 821 (A).

the particulars of claim. This failure resulted in a reduction of the amount claimed from R967,760.00 to R277,720.00.

[28] The Defendants, however, are not entirely innocent either. The Plaintiff alleged in the particulars of claim that monthly statement of accounts were delivered to the Defendants and it is obvious that the Defendants never reconciled the statements of accounts with their own records and never notified the Plaintiff that the statement of accounts lacked accuracy.

[29] In light of the Plaintiff's own inaccurate bookkeeping, I am not inclined to conclude that the Defendants' failure to reconcile their records with the statement of accounts of the Plaintiff justifies the making of a punitive costs order against the Defendant.

HAVING REGARD TO ALL OF THE ABOVE, THE FOLLOWING ORDER IS ISSUED:

1. The First and Second Defendants, jointly and severally, the one to pay the other to be absolved, is ordered to pay the Plaintiff:
 - 1.1. The amount of R277,720.00;
 - 1.2. Interest on the aforesaid sum calculated per annum *a tempore morae*, calculated from date of Summons to date of final payment; and

- 1.3. The Plaintiff's costs of suit on a party and party scale, costs of counsel on scale B.

SIGNED AT PRETORIA ON THIS THE 18th DAY OF JUNE 2025.

A handwritten signature in black ink, appearing to be 'J.F. Grobler', is written over a solid black rectangular redaction box.

J.F. GROBLER AJ
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Date of hearing: **25 April 2025**

Date of Judgment: **18 June 2025**

For the Plaintiff: **Adv. L. Strydom**

Instructed by: **De Bruin & Morkel Attorneys**

On behalf of the Defendants: **Mr. Mopai**

On instructions of: **Ramaboa Incorporated**