



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable
Case no: 245/2024

In the matter between

**UNITRADE 1047 (PTY) LTD t/a ISIDINGO SECURITY
SERVICES**

PLAINTIFF

and

METSIMAHOLO LOCAL MUNICIPALITY

DEFENDANT

Neutral citation: *Unitrade 1047 (Pty) Ltd t/a Isdingo Security Services v Metsimaholo Local Municipality* (245/2024) [2025] ZAFSHC 190 (24 June 2025)

Coram: Deane AJ

Heard: 16 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 12h00 on 24 June 2025

Summary: *Res judicata* – court finally decided matter – same issue cannot be re-litigated between the same parties.

ORDER

The application is dismissed with costs.

JUDGMENT

Deane AJ

Introduction

[1] This is an exception application seeking to strike out the counterclaim filed by the defendant on 8 November 2024. The counterclaim accompanied an amended plea in response to the excipient's claim. The plaintiff/excipient thereby seeks to have the defendant's claim in reconvention declared excipiable and/or dismissed.

[2] The exception herein is against the three claims in the counterclaim and the plaintiff complains that the claim in reconvention lacks particulars to sustain a cause of action. The application is opposed by the defendant/respondent.

Background

[3] This a second exception brought in this matter. The first exception was met with a notice of intention to amend the plea and counterclaim. The applicant/excipient herein opposed the intended amendment on the basis that the amended plea and counterclaim would become excipiable. On 25 October 2024, the honourable Daniso J (hereinafter the Daniso judgment) granted a judgment outlining the paragraphs of the amended plea and counterclaim which were allowed and/or those which were not allowed. Pursuant to the guidelines as per the Daniso judgment, the defendant then filed an amended plea and counterclaim which is now the subject-matter of the exception herein.

[4] The exception is against the three counterclaims which are as follows:

'In respect of Counterclaim A:

AD CLAIM IN RECONVENTION:

9.

By inserting the words **CONDITIONAL**, just before "CLAIM" in the existing heading of the CLAIM IN RECONVENTION.

10.

By inserting a preamble to the CONDITIONAL CLAIM IN RECONVENTION, just above the existing paragraph 39, with the following words:

‘The defendant’s claim in convention is conditional only in the event of this honourable court finding that the defendant’s set-off, either in whole or in part, is not based on a liquid debt or liquidated amount which is capable of prompt ascertainment, or its money value has been ascertained, which the defendant persists on, but in that eventuality, the defendant’s claim in reconvention shall take effect.’

In respect of Counterclaim B:

11.

By inserting the following new subsequent paragraph just after the existing paragraph 42, but above the existing paragraph 43, whose numbering will follow the sequence suggested above, in the following words:

43. Upon being presented with the invoices for the period from January 2023 to October 2023, the defendant effected payments of the aforesaid invoices in the total amount of R3 200 877.26 (Three million two hundred thousand eight hundred and seventy-seven cents).

In respect of Counterclaim C:

12.

By inserting the following 4 new subsequent paragraphs just after the existing paragraph 88, but above the existing paragraph the words “CLAIM B”, whose numbering will follow the sequence suggested above, in the following words:

89. It is common cause that the plaintiff and the defendant have entered into a service level agreement as stated and pleaded above by both parties.

90. In the bona fide and reasonable belief that the plaintiff has submitted accurate and reliable invoices for the services rendered from January 2023 to October 2023, the defendant effected payments of all the invoices for the aforesaid period.

91. The aforesaid amount paid to the plaintiff as aforesaid was not entirely owing nor due to the plaintiff on the bases that the aforesaid claims by the plaintiff were inflated or fraudulent or for services never rendered and/ or for services rendered without authorization by either the parties’ contract.

92. The plaintiff has nevertheless appropriated the aforesaid money paid to the plaintiff by the defendant.

93. WHEREFORE the defendant claims for the repayment of the inflated amount for services not rendered and/ or for services rendered without the sanction of the parties’ contract herein.’

[5] As mentioned, the plaintiff excepted all three counterclaims made by the defendant. Regarding claim A, the grounds upon which the exception was brought were the following:

'Paragraph 31 of the amended plea states that the claim in reconvention is conditional upon the court finding (what's the court no doubt will) that "Defendants setoff" is not based on a liquid debt or liquidated amount. This denotes an acceptance on the part of the Municipality of the trite principle that each is only liquidated amounts that may be set off against each other. This is the condition that is then and thus attached to the entire amended claim in reconvention. This creates confusion.

The Municipality contends that for the period January 2023 to October 2023 it had affected payments under contract to Unitrade and it realised in December 2023 that some of its past payments had apparently been undue because the invoices were inflated and/or fabricated. Facta probantia is then pleaded as the Municipality says it embarked upon an investigation and that reveals two essential facts.

Counsel for the plaintiff then goes on to list these facts and thereafter contends that "the heart of the claim is then pleaded in para 40 et seq....." and that "this read together with para 45 reveals two essential problems with what is termed to be claim A.' Counsel

[6] The plaintiff concludes that 'the lion's share thus of claim A is not legally acceptable given the factual substratum pleaded. It strikes at the basis of the claim as formulated, because in claim a there is no true distinction between the bases of the claimed amount.'

[7] Regarding claim B, the plaintiff submits that:

'Claim B simply says in relation to an invoice submitted in November 2023, that Unitrade is not entitled to the amount claimed. Read together with page 73 paragraph 103 and 104, no substantial relief is claimed concerning claim be. Indeed, it seems as if this claim has been incorporated to bolster a claim for set off, but under circumstances where paragraph 31 makes the counterclaim conditional upon the court finding that no set off may not be applied. Why this claim has been incorporated is entirely unclear, and that is if it may be called a claim.'

[8] Regarding claim C, the applicant submits that:

'... it is difficult to describe claim C accurately. The contention is that Unitrade is liable to the Municipality for payment of R1,500,000.00 because the municipality had extended that amount in payment to a new contractor, in order to pay salaries owing to security officers that had rendered such services within the tenure of the agreement Unitrade and the Municipality had ... No allegations have been made to sustain what clearly then could only be an enrichment claim. None of the necessary averments have however been made for a claim *negotiorium gestio*.'

[9] The defendant, on the other hand, contends that the matter is *res judicata*, asserting that Daniso J has already adjudicated the issue of whether the defendant's claims A and

B are excipiable. In support of this assertion, the defendant relies on the Daniso judgment, submitting that the grounds upon which the present exception is founded are either substantially similar to or overlap with those of the first exception.

[10] However, counsel for the plaintiff argues that the matter before Daniso J was distinct, as the court was asked to grant leave to amend the particulars of claim, whereas the present proceedings require this court to determine the exception at hand. Accordingly, the plaintiff maintains that *res judicata* does not apply in the present circumstances.

[11] The defendant referred to the case of *Smith v Porritt and Others* where,¹ in following the decision of *Boshoff v Union Government*,² it was held that:

‘Following the decision in *Boshoff v Union Government* 1932 TPD 345 the ambit of the *exceptio rei judicata* has over the years been extended by the relaxation in appropriate cases of the common law requirements that the relief claimed and the cause of action be the same (*eadam res and eadam petendi causa*) in both the case in question and the earlier judgment. Where the circumstances justify the relaxation of these requirements those that remain are that the parties must be the same (*idem actor*) and that the same issue (*eadem quaestio*) must arise.’

[12] This court was further referred to *African Farms and Townships Ltd v Cape Town Municipality*,³ where it was held at 564C that:

‘Because of the authority with which, in the public interest, judicial decisions are invested, effect must be given to a final judgment, even if it is erroneous. In regard to *res judicata* the enquiry is not whether the judgment is right or wrong, but simply whether there is a judgment.’

[13] It therefore becomes necessary to examine the previous judgment to determine whether the principle of *res judicata* are applicable in the present matter. A review of the prior decision will establish whether the issues raised have been finally adjudicated between the same parties and whether the requirements for *res judicata* are satisfied, thereby precluding re-litigation of the same subject matter.

[14] Having regard to the Daniso judgment the court found the following:

‘Turning to the proposed amendments of the claim in reconvention (claim A and B). It is trite that

¹ *Smith v Porritt and Others* [2007] ZASCA 19; [2007] SCA 19 (RSA); 2008 (6) SA 303 (SCA) para 10.

² *Boshoff v Union Government* 1932 TPD 345.

³ *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 564B-C.

a mutual debt which cannot be set-off due to its incompatibility to the plaintiff's claim can be asserted in reconvention. I do not detect any deficiencies in the proposed amendments. The essential pre-requisites which must be pleaded in an enrichment action are present namely that, the defendant has been impoverished by having made payments to the plaintiff in the bona fide belief that the payment was due whereas it was not due as the invoices related to services which were not rendered or were rendered outside the scope of the agreement without the defendant's authorization. The plaintiff was enriched by the underpayments at the expense of the defendant. I hold that the conditional claim in reconvention does sustain a clear cause of action, the objection to the proposed amendments is dismissed.'

[15] The court further found that:

'The defendant has made no attempt to address the plaintiff's objections against the defendant's claim (claim C) for reimbursement of the salaries paid to the plaintiff's employees. Nevertheless, the plaintiff's liability to pay its former employees' salaries arises from a contract of employment. In the instant matter, there is no legal basis that has been proffered by the defendant for foisting itself into the contract concluded between the plaintiff and its former employees. The amendment would be unsound.'

[16] Looking at the grounds of exception by the plaintiff, from a reading of these paragraphs, the judgment clearly establishes that the issues raised in the present matter have been adjudicated in the Daniso judgment. It is also clear that the bases upon which the two exceptions are founded are clearly stated in the plea and counterclaim.

[17] I agree with counsel for the defendant that this court has fully disposed of the substance of the issue of the exception that was brought in the first instance. The said issue of substance being the ground upon which the first exception was based namely: 'the pleadings do not disclose a defence and course of action'. This court did so, having based its decision on the face of the same pleadings that are the subject matter of the second application. To entertain the second exception will, in my view, amount to recapitulation of the same point in dispute in diverse action, which is not desirous.

[18] While the plaintiff has submitted certain reasons that may differ from those previously advanced, the essence of the claim remains rooted in the same subject matter and legal grounds. In light of established legal principles, it would not be in the interests of justice to permit the plaintiff to re-open the matter through a second application of an exception, merely under the guise of presenting different reasons. Allowing such an

approach would undermine the finality of judicial determinations and disrupt the procedural integrity of the proceedings.

[19] I find it apposite to mention the principles, as articulated in the matter of *Consol Ltd t/a Consol Glass v Twee Jonge Gezellen (Pty) Ltd and Another (Consol Ltd)*,⁴ where the following was said:

‘The gist of the defence of *res judicata* is that the matter or question which is being raised by an adversary has previously been finally adjudicated upon in proceedings between the same parties and cannot be raised again. A matter is *res judicata* when the prior judgment was given (1) with respect to the same subject matter, (2) based on the same ground, and (3) between the same parties.

In determining whether the prior judgment was based on “the same ground”, regard must be had not only to the express judicial declaration in the earlier proceedings, but also to point that should have been raised but were omitted in the earlier proceedings. Where a matter becomes subject to litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time. (Paragraphs [47], [50] and [52] at 45D-F, 46G/H-47B and 47E-F) H.’

[20] Looking at the order granted by Daniso J, the court held that:

‘ORDER

1. The applicant is granted leave to amend paragraphs 1 to 7 of its plea and paragraphs 39, 42 and 88 of its claim in reconvention within ten (10) days of this order.
2. Leave to amend paragraphs 19, 21.5 to 21.6, 26 and 36 of the applicant’s plea is dismissed.
3. The applicant is liable to pay the costs on scale C.’

[21] It is evident from the order and a reading of the Daniso judgment that the issue of the applicant’s request to amend its plea and claim in reconvention has already been adjudicated. The court granted leave to amend specific paragraphs while dismissing the

⁴ See the Headnote provided by Juta in *Consol Ltd. t/a Consol Glass v Twee Jonge Gezellen (Pty) Ltd and Another* [2005] ZAWCHC 52; 2005 (6) SA 23 (C); [2005] 4 All SA 517 (C) para/at p 24D-H.

amendment request in respect of others. This order constitutes a final determination of the amendment issue. In line with the principles of *res judicata*, once a court has finally decided a matter, the same issue cannot be re-litigated between the same parties. The defendant correctly submits that the grounds on which the current exception is founded substantially overlap with those previously considered. The judgment and reasoning of Daniso J demonstrate that the substance of the exception – namely, whether the pleadings disclose a defense or cause of action – was fully disposed of. The case of *Consol Ltd* reinforces the principle that a final judgment bars subsequent litigation on the same issue.

[22] Accordingly, this exception application by the applicant is dismissed with costs.

Order

The application is dismissed with costs.



Deane AJ

Appearances

For the plaintiff: S Grobler SC

Instructed by: Woodhead Bigby Attorneys, Durban
c/o Lovius Block Inc, Bloemfontein

For the Defendant: M S Sikhwari SC

Instructed by: Ntleru Inc. Attorneys, Pretoria
c/o Amade & Company Inc, Bloemfontein.