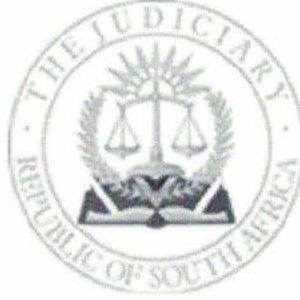
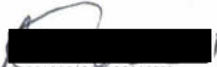


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO:A000089/2023

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> /NO
(3)	REVISED. <u>✓</u>
<u>02/06/2025</u> DATE	
 SIGNATURE	

In the matter between:

MUNRO TRANSPORT CC

Appellant

And

ROBIN SWIEGERS

Respondent

CORAM: MABESELE AND MOTHA JJ

JUDGMENT

MABESELE J: (Motha J, concurring)

[1] This is an appeal against the judgment and order of the Court below, dated 9 November 2022. The appeal is not opposed. The appellant's legal representative deposed to an affidavit, stating that, on 18 October 2023, at 11:52, the appeal documents were served on the respondent's attorney, Ms. Shakera Timo, via e-mail. On 22 October 2023 an email was received by the appellant's attorneys, from Ms. Shakera Timo, stating that their office did not hold instructions to oppose the appeal. The appellant applied for condonation for late filing of this appeal. Having considered the reasons advanced in the papers we were unable to refuse the application.

[2] Central to this appeal is the admissibility of hearsay evidence and failure by the Court to apply the provisions of the Magistrates Court Rules correctly to the evidence as it considered documents which were discovered as undisputed and proven evidence, thereby ignored authorities that an admission of documents under Rule 23(9) does not amount to an admission of the contents of the documents and still needs to be proven through application of rules of evidence.

[3] The matter in the Court below centred around a contractual dispute between Mr. Robin Swiegers and Munro Transport.

[4] Mr. Robin Swiegers, a plaintiff in the Court below, averred that he entered into an oral agreement with Mr. Pierre Botes, an employee of P. Munro Transport, who was duly authorized to enter into such agreement. The agreement was concluded on 21st August 2018. The material terms were that Mr. Swiegers would act as a facilitator for the purpose of securing a contract between the company known as Van Reenen Steel and P. Munro Transport, in terms of which Mr. Swiegers would transport goods from

Munro Transport CC to Van Reenen Steel. Mr. Munro would invoice Van Reenan Steel for services rendered and pay Mr. Swiegers an agent's fee in an amount of R 50 000.00(FIFTY THOUSAND RAND) per delivery, upon receipt of payment from Van Reenen Steel. In his plea, Mr. Munro denied being indebted to Mr. Swiegers on the basis that Mr. Botes had no authority to enter into any agreement with Mr. Swiegers on behalf of P. Munro Transport.

[5] Mr. Swiegers' evidence was that Mr. Munro knew about the agreement in question. He forwarded a WhatsApp message to Mr. Botes about his commission and forwarded a copy to Mr. Munro. Subsequently, he made contact with Mr. Munro, telephonically. During the telephonic discussion, Mr. Munro promised to pay him the commission as soon as he received payment from the client. He also went to the premises of P. Munro Transport to ask for his money. Upon arrival at the premises, Mr. Munro became hostile with him. He was working for a company known as NatCorp when he concluded an agreement with Mr. Botes.

[6] Mr. Munro is the sole member of the P. Munro Transport. The company transports goods to the various customers, including Van Reenen Steel and NatCorp companies. Mr. Pierre Botes was employed by P. Munro Transport as operations manager. His duties, according to Mr. Munro, were to ensure that the trucks were being dispatched to the various destinations and make sure that the company applies for abnormal permits. It was not part of his duty to enter into contracts on behalf of the company. Mr. Botes has since left employment due the restructuring of the company that occurred after COVID-19 epidemic. Mr. Munro testified that neither company nor him had dealings with Mr. Swiegers. His company did business directly with Van Reenen

Steel and not via someone else. When referred to an e-mail which Mr. Swiegers alleged to have copied him, reflecting the name "Robin NatCorp" on top, he said that he understood the email to suggest that Mr. Swiegers represented NatCorp. He became aware of the alleged agreement between Merris Swiegers and Botes when he received the summons.

[8] During cross-examination, he said that he challenged Mr. Botes about the alleged agreement and was not given a straightforward answer,

[9] There were two mutually destructive versions before the Court below. In such circumstances, the matter must be approached as set out in the *National Employers' General Insurance Co Ltd V Jagers*¹ where the Court remarks as follows:

'It seems to me, with respect, that in any civil case, as any criminal case the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not, the court will weigh up and test the plaintiffs allegations against the general probabilities. The estimate of the credibility of a witness, will therefore be inextricably bound up with consideration of probabilities of

¹ 1984(4) SA 437 [E]

the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour plaintiffs case any more than they do the defendant's, The plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.....'

[10] The onus rested on Mr. Swiegers to demonstrate to the Court that his version was more likely true than not. His claim was based on oral agreement alleged to have been concluded with Mr. Botes. Mr. Botes was not called to confirm the oral agreement, and importantly, to confirm authority to conclude the agreement on behalf of P Munro Transport. Regard being had that, it was not part of Botes duties to conclude agreement on behalf of P Munro Transport. This version of Mr. Munro was not disputed.

[11] Since the Court below was correctly alive to the fact that the question before it was to determine whether Mr. Botes was given authority to conclude contracts on behalf of P.Munro Transport, the Court, having considered the undisputed version of Mr. Munro that Mr. Botes had no such authority, should have dismissed Mr. Swiegers' claim. Instead the Court considered the emails which were exchanged between Messrs Swiegers, Botes and others, and included the name of Mr. Munro, as proof that Mr. Botes had authority to act on behalf of Munro Transport . These documents were discovered by Mr. Munro. The Court was also of the view that Mr Munro's silence on these emails meant that he gave implied authority to Mr. Botes to act on behalf of Munro Transport.

[12] The conclusion reached by the Court is incorrect. The main reason being that the emails ought not to have been admitted into evidence as they amounted to the hearsay evidence. No evidence was led on them. In fact, the legal representative of Mr. Munro objected to the admissibility of such evidence and the objection was dismissed without the opponent being given the opportunity to respond. The Court below did not justify admission of hearsay evidence. Moreover, there were no emails or WhatsApp messages that were forwarded directly to Mr. Munro by Mr. Swiegers, requesting payment. For all these reasons, the appeal should succeed. Since the appeal is not opposed, it will not be just for us to grant costs against the respondent.

[13] In the result, the following order is made:

13.1 Condonation for late filing of the appeal is granted.

13.2 The appeal is upheld.

13.3 No order as to costs.

13.4 The order of the Court below is set aside and replaced with the following:

13.4.1 The plaintiff's claim is dismissed with costs, on a party and party scale.



M.M MABESELE

(Judge of the High Court Gauteng Local Division,
Johannesburg)

Date of hearing : 10 June 2025

Date of judgment : 2 July 2025

Appearances

On behalf of the appellant : Adv. L.S Froneman
Instructed by : Yolandi Boshoff attorneys, Heidelberg

On behalf of the respondent : No appearance