

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2022/7368**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
<u>7/08/2025</u> <u>[Signature]</u>	
DATE	SIGNATURE

In the matter between:

WOA FUELS AND OILS

APPLICANT/PLAINTIFF

And

AFRICA RISING PETROCHEM (PTY) LTD RESPONDENT/DEFENDANT

(Previously trading as Headbush Sisters Holdings (PTY) LTD)

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **7 August 2025**.

JUDGMENT

CARRIM AJ

Introduction

- [1] This is an application for summary judgment brought by the Plaintiff alleging that the Defendant has put up a spurious defence which has no merit, and which raises no genuine issues for trial and the defence is not *bona fide* but rather contrived to delay the matter unduly.
- [2] After considering the matter, I have found this assertion completely without merit and have accordingly dismissed the application and granted the Defendant leave to defend the action.

Background

- [3] The Plaintiff is a supplier of petrochemical products ("fuel"). On 2 August 2021 it concluded an agreement with the Defendant, partly written and partly oral. An almost illegible copy of the written portion of the agreement is attached to the Particulars of Claim at 001-22. The term of the agreement was for two years, from 9 August 2021 to 9 August 2023.
- [4] The Defendant is a wholesaler of petroleum and fuel and in the business of selling, transporting and distributing petroleum and fuel products throughout South Africa.
- [5] At the time of concluding the agreement the Defendant was represented by one of its three directors Thabisa Hanise. The other directors of the Defendant are Ms VM Lebeloane and Ms Pinkie Bontle Headbush. The Plaintiff was represented by P S Mudaly and Nischal Sancho. Mr Sancho was previously employed at Puma Energy SA (Pty) Ltd ("Puma").
- [6] The relevant terms of the agreement are:

- a. The Defendant would place orders with the Plaintiff for delivery to the Kudumane Manganese Resources, an open pit mining company in the Northern Cape (the “mine”) at a minimum of 800 000 litres per month.
 - b. The Plaintiff would supply and deliver fuel (Gasoil 50) to the mine on behalf of the Defendant (defined as customer of the Plaintiff).¹
- [7] The Defendant performed under this agreement for a brief period being August to November 2021.² Payments for these volumes were made by the Defendant.
- [8] On 9 November 2021, the Defendant under the signature of Ms Lebeloane advised the Plaintiff that it had an existing exclusive agreement with Puma to supply fuel to the mine. This agreement had been concluded on 1 June 2020 and was still valid at the time the ‘purported agreement’ (in the letter the agreement is referred to as purported) was concluded with the Plaintiff. Puma had brought urgent proceedings against the Defendant. Upon receipt of this, the Defendant had been advised that the agreement with the Plaintiff was unlawful and invalid and in breach of the pre-existing agreement with Puma. (“the Puma supply agreement”). Furthermore, that the Plaintiff through its representative Mr Sancho knew or reasonably ought to have known that the Defendant was bound by Puma’s standard terms and conditions or the supply agreement at the time of concluding the purported agreement. The letter further states that the Defendant had been advised that it should honour its obligations to Puma. The letter then advises the Plaintiff that the purported agreement was concluded in breach of the Puma supply agreement and is unlawful and invalid. Consequently, the Defendant does not consider it bound by it and shall with immediate effect cease placing any orders from the Plaintiff.
- [9] This letter foreshadows the grounds of the defence raised by the Defendant in its plea.
- [10] The Plaintiff issued summons on 23 February 2022. In its Particulars of Claim it challenges the version of the Defendant set out in the 9 November letter by

¹ The Plaintiff was required to ensure that truck drivers underwent training for compliance with the mine’s requirements.

² 001-7

attaching a letter addressed to Puma from Ms Hanise dated 6 September 2021.³ This letter dated barely a month after the conclusion of the agreement with the Plaintiff refers to some dispute between Puma and the Defendant. In this letter Ms Hanise asserts that there is no binding agreement between the Defendant and Puma. The Plaintiff relies on it as refutation of the version put up by Ms Lebeloane in the November letter.

[11] In the summons the Plaintiff claims that the Defendant be directed to forthwith comply with its obligations to the Plaintiff in terms of the agreement; that it pay the Plaintiff an amount of R229 120,00 per month calculated on a particular methodology and as an alternative to the claim for specific performance it claims damages for the remaining 20 months being R4 582 400.00. In respect of both these amounts the Plaintiff sets out its calculations but provides no explanation of it obtained an average profit per litre.⁴

[12] The defence raised by the Defendant in its plea can be summarised as follows:

- a. The Defendant was in a contractual relationship with Puma in terms whereof the defendant was obliged to obtain exclusively petroleum products from Puma
- b. Ms Hanise and Ms Headbush surreptitiously entered into the agreement with the Plaintiff by withholding such purported agreement from Ms Lebeloane and the Defendant in order to promote the interests of the Plaintiff, of the one part, and Ms Hanise and Ms Headbush, of the other part.
- c. Mr Nischal Sancho, who represented the Plaintiff when entering into the agreement, was formerly a commercial director of Puma and had knowledge, or reasonably ought to have known, of the contractual relationship between the defendant and Puma.

³ 001-28 Annexure POC5

⁴ See 001-10 and 001-11 where the basic arithmetic calculation is set out. A loss of profit calculation schedule is attached as Annexure POC 6 at 001-29 with no explanation of how it was compiled.

- d. Mr Axola Myendeki, a former employee of Puma and who represented Puma in finalising the agreement with the Defendant left the employment of Puma and joined the Plaintiff at the time when the Plaintiff commenced supplying petroleum products to the Defendant.
- e. The agreement between the plaintiff and the Defendant is unenforceable in that it was entered into with the knowledge that the Defendant could not lawfully enter into the agreement, such knowledge being attributable to the Plaintiff, Ms Hanise and Ms Headbush.
- f. The Plaintiff has come to court with dirty hands. The Plaintiff unlawfully and wrongfully, in cahoots with Ms Hanise and Ms Headbush, directors of the defendant, sought to benefit from an agreement whilst the Plaintiff knew, or reasonably ought to have known, that the Defendant would be in breach of its contractual obligations in entering into the agreement with the Plaintiff.
- g. Ms Hanise had acted in breach of her fiduciary duty and she together with the Plaintiff's representatives had acted fraudulently in concluding an agreement to the benefit of the Plaintiff and which resulted in a breach of the Puma supply agreement.

Approach to Summary Judgment (Rule 32)

[13] The principles applicable to Rule 32 are well established. In terms of the amended Rule 32, summary judgment is now applied for after delivery of the plea. The procedure permits the grant of final judgment or order in a defended action without full pleadings or a trial. Its purpose is to prevent delay in a case where the defendant has no real defence and to prevent an abuse of court process.⁵ It is trite that the remedy is extraordinary and stringent because it makes inroads on a defendant's procedural rights to have his case heard in the ordinary course of events. This is why Courts are reluctant to grant summary judgment unless satisfied that the plaintiff has an unanswerable case but even then there is a discretion to refuse it.⁶ In other words, the plaintiff's case must

⁵ Harms *Civil Procedure in the Superior Courts* B-211

⁶ See *Shepstone v Shepstone* 1974 (2) SA 462 (N) (a full bench decision) at 467. *Marsh and Another v Standard Bank of SA Ltd* 2000 (4) SA 947 (W).

be unimpeachable. In terms of the new rule the affidavit must verify the cause of action and the amount. It is not sufficient to merely set out that the defendant is indebted to the plaintiff in the amount as set out in the plaintiff's claim. There must be verification of the facts on which the plaintiff relies for his cause of action. In *ABSA Bank Limited v Sable Hills Waterfront Estates CC and others and a related matter*, the Court opined that the plaintiff should deliver an affidavit that goes beyond the mere formalism that was required. A plaintiff is required to consider very carefully whether it is justified in applying for summary judgment, because it is now required to engage more closely with the contents of the plea. The plaintiff has to also explain briefly why the defences pleaded do not raise any issue for trial.⁷ It is expected of a plaintiff, in presenting his case, to place himself squarely within the four corners of the summary judgment remedy.⁸ Any defects in the presentation of its case which are not merely technical and, for that reason, cannot be condoned, will have as their consequence a refusal of summary judgment, even if no *bona fide* defence has been disclosed by a defendant.⁹

[14] In relation to money judgments the relief sought must be based on a liquid document, for a liquidated amount in money, the amount of which is either agreed upon or is capable of speedy or prompt ascertainment.¹⁰

[15] The defendant on the other hand must in its affidavit resisting summary judgment satisfy the court by affidavit that it has a *bona fide* defence to the action and such affidavit must disclose fully the nature and grounds of the defence and the material facts relied upon therefor. In deciding whether a defendant has set out a *bona fide* defence all that the Court enquires into is whether the defendant has disclosed the nature and grounds of his defence and whether on the facts so

⁷ **2022 2 All SA 767** (GJ)

⁸ *Mowschenson and Mowschenson v Mercantile Acceptance Corporation of SA Ltd* 1959 (3) SA 362 (W) at 367C.

⁹ *Gulf Steel (Pty) Ltd v Rack-Rite Bar (Pty) Ltd* 1998(1) SA 679 (0); *Shackleton Credit Management (Pty) Ltd v Microzone 88 CC and Another* 2010 (5) SA 112(KZP) at 122 F-I.

¹⁰ *Harms supra*

disclosed the defendant appears to have a defence which is *bona fide* and good in law.¹¹

Discussion

[16] In its affidavit the Plaintiff summarises the defences under three broad headings. The first defence is that the agreement which forms the subject-matter of the Plaintiff's claim is unlawful and invalid because there was already a pre-existing agreement which the Defendant had concluded with Puma. The second that the signatory to the agreement, namely Ms Hanise did not have the requisite authority to bind the Defendant to the agreement. The third defence is that Ms Hanise had acted in breach of her fiduciary duties as a director by colluding with the Plaintiff in concluding the agreement and in so doing the agreement is *contra bones mores*.

[17] The Plaintiff impermissibly introduced new evidence which at the beginning of the hearing was conceded. I was asked not to have regard to annexures FA1, FA2, FA7, FA8 and FA9. These are accordingly struck from the record. FA 6 was found to be a duplicate of 001-28 the letter of 6 September 2021 sent by Ms Hanise to Puma.

[18] I will deal with the contents of each affidavit only as and when required.

[19] As a first and obvious issue, it is not clear from the Plaintiff's affidavit in support of summary judgment how it had verified its loss of profits or damages. In the summons all that has been provided is a simple arithmetic calculation referred to as a "methodology" without any explanation of how the average profit per litre was arrived at. A schedule with a table of figures is not self-explanatory nor does it in my view amount to a verification.¹² It might be that there is some standard charge that this is known amongst firms operating in this field, but none of this is set out with sufficient detail to satisfy this Court that the amount claimed is indeed

¹¹ *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426. *Saglo Auto (Pty) Ltd v Black Shades Investments (Pty) Ltd* 2021 (2) SA 587 (GP) para 48

¹² 001-29

liquidated, easily verifiable or is unlikely to be disputed for purposes of summary judgment.

[20] The issue of quantum aside, the Plaintiff's case in my view is not unanswerable or unimpeachable. The Plaintiff's case really turns on two core issues one that the Puma supply agreement was not exclusive and two that Ms Hanise was a director of the Defendant at the time and hence Plaintiff was entitled to assume that she was authorised to conclude the agreement based on the Turquand Rule and/or provisions of the Companies Act.

[21] As to the Puma supply agreement, this is a tri-partite agreement between Puma, the Defendant and the mine. The Plaintiff is not a party to this agreement. The Customer is defined as the mine and the supplier is Puma. The Defendant is defined as the "BEE Supplier". Clause 5 expressly provides that the customer (the mine) shall procure products exclusively from Puma.¹³ The Plaintiff claims that the exclusivity applied only to the mine and not to the Defendant. The Defendant says that this is not the case. It was always understood that the Defendant would procure products exclusively from Puma in order to supply the mine.

[22] The only evidence relied upon by the Plaintiff to challenge the Defendant's defence that the Puma supply agreement was exclusive is a letter from Ms Hanise to Puma.¹⁴ In this letter dated 06 September 2021 she disputes that the Defendant is bound to Puma. This letter is a response to a letter from Puma to the Defendant dated 19 August 2021, which curiously is not attached. How is the Court to understand this letter without knowing what was said on 19 August 2021 by Puma? In any event on the face of it this letter cannot be relied upon to support the Plaintiff's case of non-exclusion for two reasons. The first is that it only disputes whether or not there is a binding- not exclusive – agreement with Puma and second it is only one party's version of the dispute between three

¹³ 005-28 Annexure PU1 Clause 5. "(a) The Customer shall be obliged to obtain exclusively its Products, required from the Supplier subject to the provisions of clauses 15, 16 and 20 of this Contract or any changes to the law that make the Suppliers no longer suitable to supply the product",

¹⁴ 001-28 Annexure POC 5.

parties to the Puma supply agreement. Puma has clearly understood it differently and on the strength of this has initiated litigation against the Defendant.

[23] Whether or not the Puma supply agreement was exclusive is a matter for factual evidence to be procured from the parties to that agreement such as the context leading up to the signing of the agreement, how the role of the BEE supplier was understood and how the agreement was implemented by the three parties to it. The Plaintiff who is not a party to the agreement cannot testify through a theoretical interpretative exercise as to how parties to that agreement understood the operation of clause 5 in order to dispute how the very parties to that agreement understood it. These are all matters for evidence for parties involved in the negotiation and implementation of the Puma supply agreement and raise triable issues for a trial court to determine.

[24] Moreover, the Plaintiff does not deny that Mr Sancho and Mr Myendeki were previously employed by Puma. On the issue of Mr Sancho, in its affidavit the Plaintiff only clarifies that he was not a commercial director. On the issue of Mr Myendeki, the affidavit is silent. These facts taken together with the date of the Ms Hanise's letter – only a month after the signing of the agreement with the Plaintiff - and the fact that Ms Sancho and Mr Myendeki moved over to the Plaintiff during this period tends to support the Defendant's case that some kind corporate shenanigans were at play.

[25] The second aspect is that the Plaintiff summarises the complaint about Ms Hanise as one of a lack of authority. It submits that the issues surrounding the Puma supply agreement are an internal spat between the directors and shareholders of the Defendant. This is a misleading summary. The Defendant's defence is not one of lack of authority but rather one of fraud and/or unlawful conduct on the part of Ms Hanise and the Plaintiff's representatives. Moreover, the fact that Puma – the other party to the supply agreement – instituted proceedings against the Defendant suggests that that this was not merely an internal spat. The Defendant's defence that there was unlawful conduct on the part of Hanise and Plaintiff's representatives requires evidence from persons who were intimately involved in the implementation of the Puma supply

agreement and had knowledge of the disputes between all the parties at the time. These are triable issues best left for a trial court to resolve.

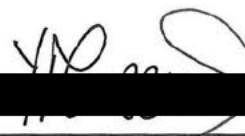
[26] In my view the Plaintiff does not have an unanswerable case, and the Defendant clearly has a *bona fide* defence which raises triable issues best left for a trial court to decide.

Order

[27] On the issue of costs, Mr Naidoo argued that an exception be made should the application fail, and costs should be ordered against the Plaintiff who was well aware of the Defendant's *bona fide* defence and who has approached the court with dirty hands. In my view whether or not the Plaintiff has approached the court with dirty hands is also for the trial court to determine.

[28] Accordingly, I make the following order:

- a. The application for summary judgment is dismissed.
- b. Defendant is granted leave to defend Plaintiff's action.
- c. Costs of the application for summary judgment are costs in the cause.



YASMIN CARRIM
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Plaintiff:

Instructed By:

For the Defendant:

Instructed By:

Hearing Date:

Judgment Date:

Adv. A. Van Der Westhuizen

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Adv. K. Naidoo

L. Mbangi Incorporated

28 July 2025

7 August 2025