

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2019-24213

DATE: 19 AUGUST 2025

In the matter between:

MSC CORPORATE ACADEMY

Plaintiff

and

SMADA SECURITY SERVICES (PTY) LIMITED

Defendant

Neutral Citation: *MSC Corporate Academy v Smada Security Services (2019-24213) [2025] ZAGPJHC --- (19 August 2025)*

Coram: Adams J

Heard: 5 and 6 May 2025

Delivered: 19 August 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 19 August 2025.

Summary: Contract – education and training services rendered in terms of written agreement – plaintiff claiming balance of contract price payable in terms of the agreement – defendant disputes liability for the amount claimed and pleads

plaintiff failed to perform its obligations in terms of the agreement – defendant also alleges that it was induced to enter into the contract by certain material misrepresentations made to it by the plaintiff – factual dispute in relation to the defences raised by defendant – decided in favour of plaintiff – defendant's defences found to lack merit – quantum of plaintiff's claim reduced on the basis of evidence led by plaintiff –
Judgment granted in plaintiff's favour.

ORDER

- (1) Judgment is granted against the defendant in favour of the plaintiff for: -
- (a) Payment of the sum of R2 458 295;
 - (b) Payment of interest on the amount of R2 458 295 at the applicable legal interest rate of 10.25% per annum from date of service of the summons, being 9 July 2019, to date of final payment; and
 - (c) Costs of suit, including Counsel's charges on scale 'B' of the tariff applicable in terms of the Uniform Rules of Court.
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JUDGMENT

Adams J:

[1]. The plaintiff ('MSC Corporate Academy' or 'MSC') describes itself as 'a fully accredited Further Education and Training Provider that offers quality diplomas and certificates, using the latest technology'. It claims to be one of the biggest names in education in South African and that their offerings cater to the student market as well as to corporate institutions. The defendant ('Smada Security Services' or 'Smada') is a security solutions company, on whose behalf MSC Corporate Services provided training to a number of learners in terms of and pursuant to a written agreement concluded between them during or about October 2018 ('the written contract').

[2]. The written contract between the parties came into existence as a result of a proposal titled 'Skills Programme Proposal: Skills Development Solution' made during October 2018 by MSC Corporate Academy to Smada Security Services, which was duly accepted by a Mr Yusuf Adams on behalf of the latter company. The agreement contained exact details and particulars of the training

and education services to be rendered by MSC Corporate Academy on behalf of Smada Security Services. Importantly, Smada Security Services agreed to pay to MSC Corporate Academy, 'before commencement of training', the total sum of R3 052 225 (exclusive of value added tax) for the services to be rendered. The payment terms of the contract were subsequently varied by agreement between the parties. The effect of the agreed variation of the payment terms was that the total contract price was payable by Smada to MSC in instalments by the end of December 2019.

[3]. In this defended action MSC Corporate Academy claims from Smada Security Services the total amount of R2 526 112.50 (exclusive of VAT), which, it alleges, represents the balance of the contract price, an amount of the R526 112.50 (excluding VAT) having been paid by Smada to it during December 2018.

[4]. MSC Corporate's claim is resisted by Smada on the basis that MSC Corporate failed to render the services as set out in clause 7 of the agreement in that they failed to provide to Smada the following: (a) a summary of the project; (b) an overview of the training sessions on a monthly basis, alternatively, on an annual or quarterly basis; (c) it failed to ensure candidate attendance and competency, candidate progress and conduct candidate remediation sessions; and (d) it failed to render the services in respect of the fifty five learnerships for which it seeks remuneration.

[5]. Smada also alleges in its plea that they were induced to enter into the contract by certain material misrepresentations made to them by MSC prior to the conclusion of the agreement. These misrepresentations made by MSC, so Smada alleges, were as follows: (a) that it would be entitled to recover the entire spend, alternatively, the majority thereof, through the relevant Sector Education and Training Authority (SETA) specific to its industry, being the security industry; (b) that MSC would conduct a due diligence prior to entering into the agreement, and verify that Smada was registered with the relevant SETA, which would make it eligible to recover such spend; (c) that MSC would assist Smada and facilitate

the recovery of the spend from the relevant SETA; (d) there would be no additional costs to Smada, save for the skills program costs as outlined in the agreement; (e) MSC also omitted to advise it, prior to the conclusion of the agreement, that it would also be liable to pay monthly stipends of R2945 per candidate, which amounted to additional monthly costs of about R162 000 per month, which it had not budgeted for; (f) moreover, so Smada avers, MSC omitted to mention to it that there were other hidden costs over and above the initial quoted amount, and this was done to induce Smada to enter into the agreement; and (g) MSC failed to conduct its due diligence to establish whether Smada was registered with the relevant SETA, which resulted in Smada not being able to recover their spend from the correct SETA.

[6]. Smada also alleges that, according to them, MSC was overcharging them for the services rendered. Lastly, the case on behalf of Smada is that they are not liable to pay the amount claimed in view of a dispute it has with a company related to MSC, namely BEE Online Advisory (Pty) Ltd, which was to attend to the advisory aspect of its compliance and to attend to certain compliance issues on behalf of Smada in relation Black Economic Empowerment, employment equity, skills development and related legislation.

[7]. In issue in this action is whether, if regard is had to the evidence before me, including the documents introduced into evidence by the witness on behalf of MSC, there is merit in any of the defences raised by Smada. Simply put, the question to be considered by me is whether there is credible evidence before me in support of the defences raised by Smada to the claim by MSC. These issues are to be decided against the factual backdrop of the matter. The issues in dispute are of a factual nature, possibly requiring to a certain extent an interpretation of the contract concluded between the parties,

[8]. The relevant facts, gleaned from the evidence led during the trial, as well as from the documentary evidence introduced via the medium of the MSC's witness, are as set out in the paragraphs which follow. In that regard, the only witness called during the trial was a Mr Tyrone Desmond Naidoo ('Mr Naidoo'),

who was at the relevant time and presently still is employed by MSC and its related companies in a Group of Companies as Managing Director and Chief Financial Officer.

[9]. A convenient starting point for a discussion of the factual matrix in the matter is the written agreement, concluded between the parties during October 2018, which regulated the contractual relationship between them at the relevant time during the period from 2018 to 2019. The contract and its written terms and conditions are common cause between the parties. The case on behalf of MSC, as confirmed by the evidence of Mr Naidoo, is that the training and education services were rendered during the 2019 calendar year, when it trained about fifty-five unemployed learners on behalf of Smada for purposes of them attaining the following qualification: a 'National Certificate: Business Administration (Secretarial support) (SAQA ID 23655: 120 Credits)', which would have qualified the individual students who '[wished] to be involved in the administration function within any industry or non-commercial venture / organisation'. This qualification, according to MSC, is the equivalent of an NQF 3 qualification.

[10]. The evidence of Mr Naidoo was that during October to December 2018, MSC did a due diligence, and thereafter they attended to the recruitment of the required number of learners, which process was completed by January 2019, whereafter the 12-month training program commenced. On 31 December 2018, Smada paid to MSC an amount of R1 755 029.38 (R1 526 112.50 plus 15% value added tax (R228 916.880)) on account of their indebtedness in terms of the contract. On 2 January 2019, MSC repaid to Smada R1 150 000 (R1 million plus 15% VAT), which Mr Naidoo explained was a short-term loan advanced to Smada, which was experiencing cash flow problems at the time. That means that, as and at 2 January 2019, the amount outstanding on Smada's account with MSC was the net sum of R3 510 058.75 (contract price, inclusive of VAT), less R1 755 029.38 (sum paid by Smada), plus R1 150 000 (amount refunded to Smada by MSC) = R2 905 029.38 (inclusive of VAT). This was the evidence of Mr Naidoo, who also explained that the refund was aimed at assisting Smada with their cash flow, whilst at the same time entitling them to claim the

employment equity and skills development points for the payment of R1 755 029.38, which they paid in the 2018 calendar year. Smada would accordingly have received the payment of that payment for 2018 calendar year.

[11]. Mr Naidoo's evidence was corroborated by documentary proof, notably email correspondence between MSC and Smada, which, according to Mr Naidoo, belied the claim by Smada that they failed to report to Smada on the progress on the project. These documents consisted of screenshots indicating that, on a monthly basis from February 2019 through to September 2019 emails titled 'Facilitation Report' or 'Report', were sent through to Smada from MSC. He also referred to an email dated 4 February 2019, with the attachment thereto being the monthly report for the month of January 2019. The report itself gave exact details in relation to the progress made by the forty-seven learners enrolled at that stage and how the project was going generally. The report also indicated that during the period under review there were five dropouts, which needed to be replaced and were. This report, so the evidence of Mr Naidoo went, was an example of the report, prepared by the two training Facilitators responsible for the training of the learners, transmitted to Smada on a monthly basis. Mr Naidoo furthermore presented extracts of examples of the registers kept of the attendance by the learners at the training sessions, which, so his evidence went, confirm that the training and education sessions were in fact held by MSC and indeed attended by the learners.

[12]. Mr Naidoo also produced a list of students who were registered, under the program, with the Services SETA. The document, titled 'QALA Registration', is dated 25 April 2025 and is in fact a document by the Services SETA (Sector Education and Training Authority) and peculiarly indicates *ex post facto* that for the program in question there were forty-eight students registered with them by MSC for the 2019 calendar year.

[13]. As for the misrepresentations allegedly made to Smada by MSC prior to the conclusion of the contract, Mr Naidoo denies same. He also pointed out that at no stage prior to the institution of these action proceedings did Smada raise

any of the objections raised by them in the current litigation. Importantly, at no point during the 2019 calendar year period during which the education and training of the learners on behalf of Smada were ongoing, did Smada raise any of the grievances complained of in this action.

[14]. The main difficulty with the case of Smada is that there is absolutely no evidence in support of the defences raised in opposition to MSC's claim. Moreover, the evidence on behalf of MSC is unchallenged and uncontested. During cross-examination there was no suggestion made on behalf of Smada that Mr Naidoo fabricated his story. It also cannot be said with any conviction that his version is improbable – far from it. There is a ring of truth to his narration and his version is supported in all material respects by the documentary evidence. The written agreement and the correspondence between the parties make no reference to any of the grievances raised by Smada *in casu*. The reasonable inference to be drawn is therefore that the defences raised is an afterthought on the part of Smada.

[15]. I therefore conclude that there is no merit in most of the defences raised by Smada. The only point raised by Smada which, in my view, has some merit relates to the fact that the contract made provision for the training of fifty-five students at the rate of R55 495 per learner. On the evidence, it appears to me that, as contended on behalf of Smada, less than fifty-five students were in fact trained. In the January 2019 progress report submitted by MSC to Smada, forty-seven learners are mentioned as having received training during January 2019. In the 'QALA Registration' list from the Services SETA, which, in my view, is instructive, it appears that only forty-eight learners from the program were registered by MSC for the 2019 calendar year. From this I conclude that only forty-eight students received training, which means that, having regard to the terms of the contract, Smada is only liable for payment of fees for forty-eight learners.

[16]. This translates into the following calculation: $48 \times R55\,495 = R2\,663\,760$, plus R399 564 (15% VAT) = R3 063 324 (varied contract price, inclusive of VAT),

less R605 029.38 (paid by Smada on account) = R2 458 295 (grand total). This is the amount of the judgment which should be granted in favour of MSC against Smada.

[17]. MSC is therefore entitled to a judgment in its favour against Smada for the aforesaid sum.

Costs

[18]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*¹.

[19]. I can think of no reason why *in casu* I should deviate from this general rule. I therefore intend ordering costs in favour of MSC against Smada.

Order

[20]. In the result, the order which I grant is as follows: -

- (1) Judgment is granted against the defendant in favour of the plaintiff for: -
 - (a) Payment of the sum of R2 458 295;
 - (b) Payment of interest on the amount of R2 458 295 at the applicable legal interest rate of 10.25% per annum from date of service of the summons, being 9 July 2019, to date of final payment; and
 - (c) Costs of suit, including Counsel's charges on scale 'B' of the tariff applicable in terms of the Uniform Rules of Court.

¹ *Myers v Abramson*, 1951(3) SA 438 (C) at 455



L R ADAMS

*Judge of the High Court
Gauteng Local Division, Johannesburg*

HEARD ON:	5 and 6 May 2025
JUDGMENT DATE:	19 August 2025
FOR THE PLAINTIFF:	Y Peer
INSTRUCTED BY:	Edward Nathan Sonnenbergs Inc, Sandown, Sandton
FOR THE DEFENDANT:	U Ahir
INSTRUCTED BY:	Thokan Attorneys, Norwood, Johannesburg