REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: **2023/058836**

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

29 August 2025 __[redacted]

DATE SIGNATURE

In the matter between:

PAIZES ATTORNEYS INCORPORATED Applicant/Plaintiff

and

GORVEN, CAROLINE JANE Respondent/Defendant

JUDGMENT

READ A.J

INTRODUCTION

[1] This matter concerns an application for summary judgment by Paizes Attorneys Incorporated ("applicant") against Caroline Jane Gorven ("respondent") for payment of legal fees in the cumulative amount of R295,751.16, comprising two claims.

[2] Claim 1, in the amount of R154,204.78, is founded upon an acknowledgment of debt executed by the respondent on 6 July 2020, wherein she acknowledged her indebtedness for legal services previously rendered and agreed to specific repayment terms. Claim 2, in the amount of R141,546.38, arises from legal fees claimed under a mandate agreement for services rendered subsequent to the execution of the acknowledgment of debt.

[3] The respondent opposes the application primarily through a special plea contending that both claims are premature in the absence of taxation of the underlying legal bills, while also advancing various substantive defences challenging the validity and enforceability of the claimed amounts.

FACTUAL BACKGROUND

The Applicant's Case

[4] The applicant's case establishes the following chronological sequence of events which form the foundation for both claims advanced in these proceedings. On 7 October 2019, the parties entered into a written mandate and special power of attorney whereby the respondent, at her specific instance and request, instructed the applicant to provide legal services in domestic violence proceedings, with express provision that legal fees would be payable monthly upon presentation of invoices.

[5] The applicant rendered legal services pursuant to this mandate from October 2019 through to March 2021, presenting monthly invoices for services rendered which accumulated to a substantial sum by mid-2020. On 6 July 2020, the respondent signed an acknowledgment of debt acknowledging her indebtedness to the applicant in the sum of R186,204.78 for legal services previously rendered up to that date, agreeing to discharge this liability through monthly instalments of R4,000.00 commencing from 6 August 2020.

[6] The respondent defaulted on her obligations under the acknowledgment of debt from 6 March 2021, having made only partial payments totalling approximately R32,000.00, leaving an outstanding balance of R154,204.78 which forms the basis of Claim 1. Simultaneously, the applicant continued to render legal services under the

original mandate subsequent to the acknowledgment of debt, presenting monthly invoices which remained unpaid and now total R141,546.38, constituting Claim 2.

The Respondent's Opposition

[7] The respondent's opposition, in the form of a special plea and a substantive plea, advances several grounds of challenge which apply with different force to each of the applicant's claims. The special plea contends that both claims are premature as the underlying legal bills have not been subjected to taxation, which the respondent maintains constitutes a prerequisite to enforcement regardless of any subsequent contractual arrangements.

[8] Regarding Claim 1 specifically, the respondent alleges that she executed the acknowledgment of debt without adequate legal representation, was unaware of her right to seek taxation of the underlying bills, and was subsequently advised by her current legal representatives that the acknowledged amount is excessive and improper. Concerning Claim 2, the respondent disputes both the quantum of fees charged and the reasonableness thereof, maintaining that proper determination of her liability requires prior taxation by the appropriate taxing officer.

[9] The respondent has lodged a complaint with the Legal Practice Council regarding alleged professional misconduct and seeks either a stay of proceedings pending taxation of all bills or, alternatively, pending resolution of her regulatory complaint. The respondent does not deny that legal services were rendered or that some amount is due to the applicant, but contests the quantum claimed in both instances.

THE LAW

Acknowledgments of Debt and Independent Contractual Liability

[10] An acknowledgment of debt constitutes a distinct contractual undertaking which does not require proof of the underlying obligation for its enforcement.

[11] The execution of an acknowledgment of debt operates as a clear manifestation of the debtor's acceptance of liability for the specified amount and constitutes evidence of waiver of any right to challenge the quantum of the underlying obligation through

processes such as taxation. This principle recognises that a party who voluntarily acknowledges specific indebtedness cannot subsequently resile from that acknowledgment without demonstrating vitiating circumstances.

[12] The independence of liability created by an acknowledgment of debt is significant in the context of attorney's fee disputes, where the client's voluntary acknowledgment of indebtedness for legal services previously rendered operates to preclude subsequent challenge to the quantum of the underlying bills through the taxation process.

Taxation in Attorney Fee Claims

[13] In **Benson and Another v Walters and Others** 1984 (1) SA 73 (A) at 84B, the Appellate Division established that taxation is not a prerequisite for the institution of an action on a bill of costs, but that if the client insists on taxation, the action cannot proceed until the bill has been taxed.

Summary Judgment Principles

[14] The principles governing summary judgment applications are well established. In **Maharaj v Barclays National Bank Ltd** 1976 (1) SA 418 (A) at 426, the Court held that a court considering whether to grant summary judgment must determine whether:

- The defendant has fully disclosed the nature and grounds of his defence and the material facts upon which it is founded
- Whether the defence disclosed appears to be both bona fide and good in law

[15] In **Majola v Nitro Securitisation 1 (Pty) Ltd** 2012 (1) SA 226 (SCA) at 232, it was stated that summary judgment procedures are intended to prevent sham defences from defeating the rights of parties by delay.

[16] As noted in **Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture** 2009 (5) SA 1 (SCA), Corbett JA warned against requiring of a defendant the precision apposite to pleadings, but was equally concerned to ensure that recalcitrant debtors pay what is due to creditors.

APPLICATION OF LAW TO FACTS

Analysis of Claim 1 - Acknowledgment of Debt

[17] Claim 1 is a contractual claim founded upon the acknowledgment of debt executed by the respondent on 6 July 2020, rather than as a claim for the recovery of attorney's fees in respect of the underlying legal services. The acknowledgment of debt creates independent contractual liability for the specific sum of R186,204.78, with agreed repayment terms, that exists separately from any right to challenge the quantum of the original legal bills through taxation.

[18] The respondent's allegations regarding her lack of legal representation when executing the acknowledgment of debt, and possibility of duress lack the factual substance necessary to vitiate a clear contractual undertaking. The respondent relied on **Medscheme Holdings (Pty) Ltd and Another v Bhamjee** 2005 (5) SCA for the principle that economic pressure may constitute duress. This case is authority for the principle that something more than hard bargaining would need to exist for economic duress – which cases would be rare. This is not such a case. Particularly as the respondent continued with the services of the applicant, which forms the basis of Claim 2.

[19] The respondent's subsequent partial payments under the acknowledgment of debt, totalling approximately R32,000.00, without protest or reservation regarding the acknowledged amount, constitute further evidence of her acceptance of the contractual liability.

[20] The respondent's current challenge to the acknowledgment of debt, arising only after default on her payment obligations, do not constitute a bona fide defence to what is essentially a claim for breach of contract. The acknowledgment creates liability independent of the reasonableness or quantum of the underlying legal services, and the respondent has failed to establish grounds for avoiding this contractual obligation.

Analysis of Claim 2 - Mandate Agreement Fees

[21] Claim 2 requires as separate consideration as it concerns legal fees for services rendered subsequent to the acknowledgment of debt under the continuing mandate agreement, fees which have not been the subject of any acknowledgment or waiver of taxation rights. This claim falls within the traditional framework governing attorney fee disputes and must be assessed according to the principles established in **Benson *(supra*)**

[22] The respondent demanded taxation of the legal bills underlying Claim 2 in the Special Plea. Her demand for such taxation invokes the principle that taxation may constitute a stay of an action.

[23] The applicant's argument that the respondent has waived her right to taxation through conduct lacks merit in respect of Claim 2, as the respondent has disputed the quantum of these fees and has not made payments that would constitute any acquiescence to the amounts claimed.

CONCLUSION

[24] Having considered each of the applicant's claims, I conclude that the application for summary judgment should succeed in part, with different outcomes warranted for each claim based upon their respective legal merits.

[25] Regarding Claim 1, the applicant has established an entitlement to summary judgment based upon the acknowledgment of debt, which creates independent contractual liability that cannot be defeated by subsequent demands for taxation of the underlying bills. The respondent's defences to this claim lack sufficient foundation to constitute bona fide triable issues, and her voluntary acknowledgment of the debt operates as effective waiver of any right to challenge the quantum through taxation. Costs are as agreed in the acknowledgement of debt.

[26] Regarding Claim 2, the respondent has raised a challenge through her demand for taxation of bills in respect of which she has not waived her rights and which she actively disputes.

ORDER

In the result, I make the following order:

1. The application for summary judgment succeeds in respect of Claim 1 only.

2. The respondent is ordered to pay to the applicant the amount of R154,204.78 together with interest at the prescribed rate from 6 March 2021 to date of payment.

3. Costs of Claim 1 shall be on an attorney and client scale.

4. The application for summary judgment is dismissed in respect of Claim 2.

6. The costs for Claim 2 are costs in the cause.

[redacted]

READ A.J

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

Heard on: 12 June 2025

Delivered on: 29 August 2025

For the Applicant: Adv. L Peter

Instructed by: Paizes Attorneys

For the Respondent: Adv. J W. Kloek

Instructed by: Minnie&Du Preeze Incorparated