

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024/028107

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

22/09/2025

DATE

SIGNATURE

In the matter between:

SCHINDLERS ATTORNEYS AND NOTARIES

Applicant

and

DZUNISANI ALDWORTH MBALATI

Respondent

JUDGMENT

BRICKHILL AJ:

Introduction

- [1] This is an application for monetary judgment for legal professional services rendered by the applicant to the respondent.
- [2] The applicant is a firm of attorneys that provided professional services to the respondent, Mr Mbalati. At the time that the services were provided, the applicant practised as “*Schindlers Attorneys and Notaries*”. By the time the matter was heard, it had changed its name to “*HGBSchindlers Attorneys and Notaries*”. The identity and name of the applicant firm of attorneys is one of the defences relied upon by Mr Mbalati.
- [3] After paying a substantial portion of the applicant’s fees, Mr Mbalati ceased paying and a dispute arose. The applicant instituted an application for monetary judgment, relying on Mr Mbalati’s alleged admissions of indebtedness and partial payment, to seek payment of the outstanding balance of its fees. The application is opposed.
- [4] I begin by tracing the relevant factual background to the claim.

Factual background

- [5] On or about 3 October 2020, Mr Mbalati and the applicant (then Schindlers Attorneys and Notaries) entered into a written fee agreement in terms of which the applicant agreed to render legal professional services to Mr Mbalati (“the Fee Agreement”). The material terms of the Fee Agreement included the following:
 - a. The applicant would render defined legal services to Mr Mbalati at his special instance and request (clause 5);
 - b. Mr Mbalati would make payment to the applicant of the amounts reflected in the schedule of fees to the Fee Agreement as well as disbursements (clause 6);
 - c. All accounts in respect of fees and other charges were payable upon presentation without deduction and/or set-off (clause 7.1);

- d. If Mr Mbalati wished to dispute any charge appearing on any invoice, he would need to do so no later than thirty (30) days after receipt of such invoice and, should he fail to do so, he would be deemed to have accepted liability for payment for such services rendered (clause 7.6);
- e. If any invoice was not paid within 30 (thirty) days, the applicant could charge Mr Mbalati interest at a rate of 2% per month from due date to date of actual payment, both days inclusive (clause 7.7.2);
- f. The applicant reserved the right to grant Mr Mbalati discounts on fees in its sole discretion (clause 8);
- g. In the event of a dispute arising in respect of fees, any such discounts given would no longer apply (clause 8.1.1) and the relevant fees to which the discounts related would become payable upon presentation of the invoices (clause 8.1.2);
- h. The parties agreed domicilium and service addresses and processes (clause 28); and
- i. The parties agreed that any costs awarded arising from the Fee Agreement would be recoverable on the scale as set out in the schedule of fees to the agreement (clause 30.2), which the applicant interprets to entail the attorney and own client scale.

[6] The applicant provided legal services to Mr Mbalati and rendered invoices for the services in terms of the Fee Agreement to a total value of R1 175 996.41. Mr Mbalati made payments towards this amount to a total of R725 262.01. The applicant claimed the outstanding balance of R450 734.40, initially by communicating directly with him.

[7] The applicant put up the communications between itself and Mr Mbalati regarding the payment of his outstanding fees, in the form of WhatsApp messages over an eight-month period from 6 April to 5 December 2023. The respondent does not deny the messages, but contends that they are privileged as his statements were made on a without prejudice basis in an attempt to settle

the dispute. I deal with the claim of privilege separately below. The communications included the following:

- a. On 6 April 2023, the applicant's 'Celeste' sent Mr Mbalati a message enquiring when payment could be expected and he responded on the same day to say that the account would be paid "most likely next week".
- b. On 30 August 2023, Celeste again contacted him to request payment and he replied the same day saying that he would "attend to it urgently".
- c. On 31 August 2023, Celeste sent a further message asking Mr Mbalati when the applicant could expect payment and he replied, "I expect payment to be made next week in full".
- d. On 20 September 2023, Celeste sent a message stating that the applicant had not received payment and asking Mr Mbalati to confirm when they should expect to receive it, to which Mr Mbalati did not reply.
- e. Celeste sent a further message on 29 September 2023, asking when the applicant could expect to receive payment, to which Mr Mbalati replied on the same day to say "I will process it early next week".
- f. On 3 November 2023, Celeste sent a message confirming that the applicant had not received payment and requesting that Mr Mbalati "make the payment urgently today". There was no reply.
- g. On 20 November 2023, Celeste sent a further message requesting "an update on the anticipated timeline for payment" and saying that the applicant "urgently require[d] prompt payment", to which Mr Mbalati replied on the same day to say "let me make part payment this week". Celeste sent a follow-up to this message on 23 November 2023 providing "a kind reminder to please make partial payment this week". There was no reply.
- h. From 21 November 2023, meanwhile, a separate WhatsApp conversation commenced between Mr Craig Green, a partner at the applicant firm, and Mr Mbalati.

- i. On 29 November 2023, Celeste sent a message to Mr Mbalati referring to his “discussion with a senior partner about settling the account monthly” and reminding him that “the first payment is due by close of business tomorrow”.
- j. Mr Green, who is a partner of the applicant, and Mr Mbalati exchanged further messages from late November into early December 2023. On 5 December 2023, following several messages from Mr Green advising that payments had not been made, Mr Mbalati sent a message in which he claimed have been dealing with a personal crisis and said “I am sorry I have not handled it well. I owe you and will do my best to settle as soon as I can.” (emphasis added)
- k. Still on 5 December 2023, Mr Green replied, “Okay. Is the 14th of December still achievable per your original undertaking? I need you to sign an Acknowledgement of Debt in order to satisfy my partners. Please confirm that you will sign it BEFORE I spend the time preparing it.” Mr Mbalati sent an immediate response as follows:

“My debt is not disputed. Anything that makes you comfortable. I am 100% sure it will be settled this month.” (emphasis added)
- l. Mr Green replied a few minutes later, saying that he would “send AOD for signature today or tomorrow”.
- m. Two days later, on 7 December 2025, Mr Green sent an acknowledgement of debt and the full statement of account to Mr Mbalati by WhatsApp message.

[8] Mr Mbalati did not in his answering affidavit specifically address these communications, save to plead that the WhatsApp messages were privileged and stating that he would seek an order striking out all reference to them.

[9] During the period in which services were rendered to Mr Mbalati, the applicant practised under the name of ‘Schindlers Attorneys and Notaries’. On 6 June 2024, the Gauteng Provincial Office of the Legal Practice Council addressed a letter to the applicant confirming “that the firm name has been changed from

Schindlers Attorneys and Notaries to HBGSchindlers Attorneys and Notaries with a continuation of the trust account of the firm.”

[10] In response to the application, Mr Mbalati raises defences that:

- a. the communications admitting indebtedness are privileged;
- b. the applicant lacks locus standi and has failed to establish its link to the claim;
- c. the deponent to the founding papers lacked the requisite knowledge and authority to depose and to bring the application;
- d. he has established a *bona fide* defence sufficient to resist summary judgment;
- e. he denies indebtedness; and that
- f. he is entitled to insist on the taxation of the applicants’ fees.

[11] I consider each of these issues in turn.

Privileged communications

[12] Mr Mbalati invites the court to strike out all reference to the WhatsApp messages and annexures of such messages relied on by the applicant on the basis that the undertakings that they contain are privileged and were made on a without prejudice basis in an effort to settle the matter.

[13] The question is whether the WhatsApp messages constituted communications between the parties undertaken with a view to a settlement of their dispute. There are no textual indications, such as the use of the words ‘without prejudice’ or other language that might indicate an attempt to negotiate a settlement on new terms, but the language alone is not decisive. The test is whether, in substance, the communications constituted a genuine attempt at settlement.¹

¹ *Harms Civil Procedure in the Superior Courts* at B34.1 and the authorities cited there.

[14] The language of Mr Mbalati's communications, rather than constituting any attempt to settle the dispute on different terms, is consistently in the nature of an unqualified acknowledgement of indebtedness. For eight months, he made promises to pay, the only changes being the promised dates of payment of the claim. On 5 December 2023, he said "I owe you" and also "My debt is not disputed", while agreeing to sign an acknowledgement of debt (which he never signed).

[15] In the circumstances, the communications did not constitute any attempt at settlement but were rather acknowledgements of the debt and promises to pay. They are not privileged.

The identity of the applicant / locus standi

[16] Mr Mbalati denies that the applicant has locus standi to bring the claim, essentially arguing that the applicant is not the entity with which he contracted and which provided legal services to him. He argues that the identity of the applicant is unclear.

[17] In what appears to be an attempt to mislead the court or create confusion, the respondent changed the description of the applicant in the header of the notice to oppose, the header of the answering affidavit, and in the text of the answering affidavit, to "Schindlers Attorneys and Conveyancers".

[18] Notwithstanding the multiplicity of firms containing "Schindlers" in the South African legal market, the factual position regarding the applicant is clear.

[19] Mr Mbalati contracted with the firm Schindlers Attorneys and Notaries. It provided services to him. He paid it, in part. Mr Green was a partner of Schindlers Attorneys and Notaries during the relevant period. Schindlers Attorneys and Notaries instituted proceedings against Mr Mbalati in March 2024.

[20] Subsequently, with effect from, at the latest, 6 June 2024, Schindlers Attorneys and Notaries formally changed its name to 'HBGSchindlers Attorneys and Notaries', this being the date on which the Gauteng Provincial Office of the Legal Practice Council communicated its approval of the name change. It retained its

trust account and practice address, and Mr Green remained a partner of the firm. The applicant explained these facts in its replying affidavit, attaching the relevant correspondence from the Legal Practice Council and the fidelity fund certificate for Mr Green.

[21] Accordingly, the name change took place after the launch of the litigation and after all the relevant events relating to the dispute had occurred. At the hearing of the matter, the applicant argued that there was no impediment to granting judgment in the name of 'Schindlers Attorneys and Notaries', but made application in the alternative for the amendment of its name to 'HBGSchindlers Attorneys and Notaries' in the court heading to the extent necessary, in terms of Rule 28(10).

[22] I am satisfied that it is appropriate to grant the amendment of the court heading to reflect the formal name change of the applicant, as approved by the Legal Practice Council. There is no prejudice to Mr Mbalati, given that the amendment does not introduce a new party but simply reflects a formal name change. This amendment will also ensure that there is no impediment to enforcement of the judgment.

Authority and knowledge of the deponent

[23] Mr Mbalati disputes the authority and knowledge of Mr Craig Marc Green to depose to the founding affidavit and bring the application.

[24] In *Ganes and Another v Telecom Namibia Ltd*, the Supreme Court of Appeal held:

"The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised."²

[25] In response to a Rule 7 notice delivered by Mr Mbalati, the applicant delivered a special power of attorney dated 8 March 2024 authorising the institution of the

² *Ganes And Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) para 19.

proceedings, authorising Mr Green to take all steps reasonably required to give effect to the proceedings, and ratifying any steps already taken. It is clear that he had the requisite authority to institute the application.

[26] Mr Mbalati also denies that Mr Green had the requisite knowledge to depose to the founding affidavit. In the heads of argument on behalf of Mr Mbalati, it is even argued that “there is no connection between the deponent and the facts giving rise to this application”. This submission is made in bad faith, given the facts.

[27] Mr Mbalati had been communicating directly and personally with the very same Mr Green regarding the payment of his account. They exchanged WhatsApp messages and spoke on the telephone regarding the outstanding account. Mr Green had been the partner responsible for Mr Mbalati’s account. In those circumstances, there can be no conceivable basis to deny Mr Green’s knowledge of the facts of the matter.

[28] The denial of knowledge and authority is not only a baseless defence, but disingenuous, which has a bearing on costs.

Bona fide defence to summary judgment

[29] Mr Mbalati contended that he had established a bona fide defence sufficient to refuse the application. Mr Mbalati variously refers in his answering affidavit to the applicant either as “the Applicant” or “the Plaintiff”, refers to the founding affidavit as “particulars of claim” and avers that “[i]t is sufficient is (sic) *prima facie*, the Respondent has clearly raised a defence the facts of which, if proven at trial, constitutes a defence to the claim”. He refers to the requirements for summary judgment.

[30] The argument is based on a misconception that this is an application for summary judgment. It is not. It is an application for final, monetary relief. The test and principles applicable to summary judgment are simply not in play.

[31] What was necessary was for Mr Mbalati to raise a genuine dispute of fact sufficient to refuse relief in motion proceedings on application of the *Plascon-Evans* rule. I turn now to that question.

Denial of indebtedness

[32] Mr Mbalati denies indebtedness on two grounds in the answering affidavit. First, he denies he has been charged the correct amounts and avers that the fees and disbursements are not correctly charged. He denies “each and every item of the alleged services”. Secondly, he alleges that not all of his payments have been taken into account and avers that the calculation of amounts owing is wrong.

[33] In both respects, however, Mr Mbalati does not provide any substantiation or evidence. Both denials are pleaded at a high level of abstraction, without specificity, evidence or even examples. He does not explain in what respect the fees and disbursements have not been charged at the correct rates. The fees and disbursements are governed by the Fee Agreement concluded between the parties. He does not identify even a single item of the alleged services that he disputes. In respect of the second complaint, he does not provide a single specific instance of a payment that was not taken into account.

[34] The *Plascon-Evans* bar is not a high one for respondents in matters of this nature.³ But it does not suffice simply to plead denials of liability in general terms and to give no evidence in support of such denials.

[35] In *Werksmans Incorporated v Praxley Corporate Solutions (Pty) Ltd*, the respondent in a similar application for monetary judgment had failed in its affidavits to point “specifically to items charged by the [attorneys] which they say are not fair and reasonable”.⁴ The respondent disputed the invoices of the applicant firm of attorneys by way of “a bald general statement unsubstantiated by any real evidence”.⁵ The approach of the respondent in the present matter is similar.

[36] The absence of any substantiated denial or evidence in support of a denial of indebtedness needs also to be considered in light of Mr Mbalati’s prior conduct

³ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634.

⁴ *Werksmans Incorporated v Praxley Corporate Solutions (Pty) Ltd* [2015] ZAGPJHC 195; [2015] 4 All SA 525 (GJ) para 61.

⁵ *Id* para 61.

and statements. Mr Mbalati previously paid towards the account for services, paying a total of R725 262.01. He draws no distinction in the papers or in argument between the services for which he paid and the portion of the work that he belatedly purports to dispute. In addition, in his eight months of exchanging communications with the applicant regarding the further outstanding amount, Mr Mbalati did not raise any dispute or question regarding his indebtedness. To the contrary, he expressly said to Mr Green “My debt is not disputed.” He appeared to agree to sign a written acknowledgement of debt for the full amount claimed, but then failed to sign it.

[37] There is one further consideration relevant to the question whether a genuine dispute regarding indebtedness has been established. The Fee Agreement provides as follows in clause 7.6:

“If the client wishes to dispute any charge appearing on any invoice, it shall do so promptly but no later than 30 (thirty) days after receipt of such invoice(s). The Client acknowledges that should it not dispute the charges appearing on an invoice within the aforesaid time period, the Client shall be deemed to have accepted the liability for payment of the Service charges for such Services rendered.”

[38] It was not argued on behalf of Mr Mbalati that clause 7.6, or its enforcement in the circumstances, is contrary to public policy. He put up no evidence to suggest that the clause entailed a process with which it was not possible to comply. In the circumstances, there is no reasonable explanation why the debt was paid in part or why indebtedness was admitted in the communications between Mr Mbalati and the applicant until this application was launched, and then only disputed in abstract and general terms. The belated bald denials fail to establish any genuine dispute of fact.

[39] Accordingly, the applicant has established on the papers that Mr Mbalati is indebted to it in the amount claimed, being R450 734.40.

Taxation

[40] Mr Mbalati further opposed the application on the basis that the fees of the applicant had not been taxed. He did not seek a referral to taxation, but the

dismissal of the application. Mr Mbalati raised taxation for the first time in the answering affidavit.

[41] Taxation is not a prerequisite for the institution of proceedings on a bill of costs, but a dilatory plea is available to a party who insists on taxation.⁶ In order to advance a special plea of taxation, a client must allege fraud or over-reaching.⁷

[42] In *Chapman*, Booysen J held that the dilatory plea of taxation is not available where, as on the facts of that matter, a party is suing for a balance of fees which was agreed on.⁸ Booysen J reasoned:

“It seems clear that an acknowledgment of debt in respect of a balance of an existing debt coupled with an implied undertaking to pay the debt gives rise to an obligation to pay that debt when it is accepted by the creditor.”⁹

[43] In *Chapman*, the acknowledgement given by the erstwhile client of the attorneys was in writing and read: “We write to acknowledge and confirm the amount outstanding to yourselves in respect of professional services rendered as at 31 December 1994, to be R169 170,77.”¹⁰

[44] In the present matter, Mr Mbalati acknowledged indebtedness in WhatsApp messages to the applicant. The most explicit of these were two messages to Mr Green on 5 December 2023. In the first, Mr Mbalati said, “I owe you and will do my best to settle as soon as I can”; and in the second, in response to Mr Green’s question whether he could prepare an acknowledgement of debt for Mr Mbalati to sign, Mr Mbalati said,

“My debt is not disputed. Anything that makes you comfortable. I am 100% sure it will be settled this month.” (emphasis added)

⁶ *Benson and Another v Walters and Others* 1984 (1) SA 73 (A) at 84A-E; *Chapman Dyer Miles & Moorhead Inc v Highmark Investment Holdings CC and Others* 1998 (3) SA 08 (D) at 610D-F.

⁷ *Fluxmans Incorporated v Dynamic Shell South Africa (Pty) Ltd* [2017] ZAGPPHC 643 para 22.

⁸ *Chapman* (note 6 above) at 612F.

⁹ *Id.*

¹⁰ *Id.* at 610B.

[45] Although, unlike in *Chapman*, Mr Mbalati's acknowledgement did not include the actual amount claimed, it is clear on the facts that he had raised no dispute regarding the amount owed. At no stage during the eight months of engaging with the applicant by WhatsApp regarding the outstanding balance did Mr Mbalati raise any dispute or even any question of clarification regarding the amount owed. Instead, he initially part-paid the fees to a value of R725 262.01. He then stopped paying, without raising any dispute or query about the invoices, made repeated promises to pay, and repeatedly failed to pay.

[46] In *Fluxmans*, the court held that a client who had accepted the account of legal practitioners and paid it without demur, only later to raise taxation, was likely to be held to have "lost any right to object to the applicant's account and insist on taxation before payment of the balance".¹¹ The present matter is comparable, in that Mr Mbalati paid over half of the account without objection, only to raise taxation belatedly, in relation to whole account and without substantiation, when sued for non-payment.

[47] The applicant brought the application on the basis of a detailed statement of account, running to 37 pages and itemising each piece of work or disbursement charged for and setting out the interest claimed by the applicant. The final statement was generated on 7 December 2023, two days after Mr Mbalati's unequivocal acknowledgement of indebtedness. Mr Mbalati has not raised any substantiated objection to any particular item on the statement.

[48] In the circumstances, the taxation objection appears to be an afterthought contrived to resist judgment. In the face of the earlier acknowledgment of indebtedness, it is not available as a dilatory plea, let alone as a basis to dismiss the application.

Conclusion and costs

[49] While ordinarily a claim for unpaid legal fees might be expected to be brought by way of action, the present application rests on part-payment for the services

¹¹ *Fluxmans* (note 7 above) para 23.

coupled with the express acknowledgements of indebtedness by Mr Mbalati during an eight-month period of broken promises to pay. In answer, abstract denials of liability were given without substantiation, evidence or even illustration by way of example.

[50] The amount of the claim was based on the final statement presented, being an amount of R450 734.40. The Fee Agreement provided for interest to be charged at a rate of 2% per month on any unpaid fees. This agreed rate justifies departure from applying the prescribed rate of interest that would otherwise apply.

[51] That leaves the question of costs. The applicant seeks costs on an attorney and *own* client scale on the basis that this was provided for in the Fee Agreement and in light of the conduct of Mr Mbalati in these proceedings.

[52] The fact that the Fee Agreement provided for the payment of costs, in the event of litigation, on an attorney and own client scale is significant but not on its own determinative. Costs remains a matter on which the court must exercise a discretion, taking into account all relevant considerations.

[53] The conduct of Mr Mbalati indeed warrants censure. It has been characterised by tardiness and disregard for the rules of court.

[54] Mr Mbalati's heads of argument were delivered on 20 May 2024, shortly before the hearing, some ten months after the applicants' heads were filed and even after the joint practice note of the parties was filed. At the hearing, Mr Patel apologised for the late submission of the heads of argument. He also apologised for the absence of the attorney responsible for the matter, Mr Marks, whom he informed the court had fallen ill. Mr Patel also indicated that he had only been briefed the day before the hearing.

[55] In addition, the conduct of Mr Mbalati in changing the name of the applicant in the court heading – in an apparent attempt to mislead the court – is relevant to the award of costs. So, too, is the mischaracterisation of the matter as an application for summary judgment, when it is not.

[56] In the circumstances, there is a clear basis to award costs on a punitive scale. However, I am not persuaded that costs should be awarded on an attorney and own client scale. It suffices to award costs on an attorney and client scale. It goes without saying that the costs of the matter will be taxable (though the primary claim amount is not).

Order

[57] Accordingly, I make the following order:

1. The application for leave to amend is granted and the citation of the applicant is amended as per its name change to “*HBGSchindlers Attorneys and Notaries*”;
2. The respondent is ordered to pay the applicant:
 - 2.1 the amount of R450 734.40;
 - 2.2 interest thereon at the rate of 2% per month from 31 December 2023 to date of final payment, both days inclusive;
3. The respondent is ordered to pay the costs of the application on an attorney and client scale.



J BRICKHILL
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 22 September 2025.

DATE OF HEARING: 6 June 2025

JUDGMENT SUBMITTED FOR DELIVERY: 22 September 2025

APPEARANCES:

For the Applicants: Adv A Whitaker, instructed by HBGSchindlers Attorneys
and Notaries

For the Respondent: Adv M Patel, instructed by Larry Marks Attorneys