

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
(GAUTENG DIVISION, PRETORIA)**

Case No: 40806/2018

Reportable: No
Of interest to other Judges: No
Revised: No
Date: 15 September 2025


SIGNATURE

In the matter between:

NTANGA NKUHLU INCORPORATED

Plaintiff

and

INDEPENDENT DEVELOPMENT TRUST

1st Defendant

TRUSTEES FOR THE TIME BEING OF THE INDEPENDENT
DEVELOPMENT TRUST

2nd Defendant

JUDGEMENT

MOOKI J

- 1 The plaintiff sues the defendant (the IDT) pursuant to a claim arising from a cession agreement. The cession agreement is between the plaintiff and MJ Mr Mboya Project Managers CC (the corporation). The IDT denies liability. Each party called one witness in making their respective cases.
- 2 Mr Ntanga, the sole director of the plaintiff, gave evidence on behalf of the plaintiff. He made the plaintiff's case as follows. The plaintiff claims against the IDT based on a cession between the plaintiff and the corporation. The corporation ceded its claim against the IDT to the plaintiff when the corporation and its sole member, Mr MJ Mr Mboya, could not pay the plaintiff for professional services rendered to them by the plaintiff.
- 3 Mr Ntanga made various enquiries with Mr Mboya before concluding the cession agreement. The enquiries included whether there was a formal contract between the corporation and the IDT and whether the IDT barred the corporation from ceding its claims. Mr Mboya assured Mr Ntanga that the corporation could cede its claims against the IDT with no restriction. Mr Mboya gave Mr Ntanga five invoices, which underpinned claims against the IDT. The invoices were to be the subject of the cession. Mr Mboya also advised Mr Ntanga that there was no separate agreement between the corporation and the IDT, and that the corporation only had a letter of appointment. That was the case despite reference to an agreement in the letter of appointment.
- 4 Mr Ntanga was satisfied with assurances by Mr Mboya. The plaintiff and the corporation concluded a cession agreement on 17 May 2018. The preamble recorded that the corporation had a claim against the IDT, described as the

debtor, for services rendered in the amount of R1 544 982,20. The corporation ceded, transferred and made over to the plaintiff all right, title and interest the corporation had in and to the claims against the IDT.

- 5 The corporation authorised the plaintiff to notify the IDT of the cession. Mr Ntanga, on behalf of the plaintiff, wrote to the chief executive officer of the IDT on 18 May 2018, advising the IDT of the cession and demanding payment in the amount of R 1 600 000.00. The IDT acknowledged receipt of the letter but never paid the claimed amount. This led to the plaintiff issuing summons against the IDT.
- 6 Mr Ntanga denied that there was a contract between the IDT and the corporation which prevented the corporation from effecting a cession. He also denied that the cession agreement did not specify what had been ceded, in that the corporation ceded its claims against the IDT to the plaintiff.
- 7 Mr Ntanga denied that the corporation would have notified the IDT if the corporation could effect a cession. He pointed out that the cession agreement states that the plaintiff were to notify the IDT of the cession, which the plaintiff did. He denied that there was nothing to cede, when it was put to him that the corporation did not prove a claim against the IDT. Mr Ntanga contended that the plaintiff did not have to show what work was done because the plaintiff's claim is based on a cession.
- 8 Mr Ntanga agreed that Mr Mboya can confirm if there was an attachment to the letter of appointment. He denied, however, that the corporation had

both a letter of appointment and an agreement as mentioned in that letter.

He maintained that such an agreement existed, pointing out that the IDT did not produce the agreement.

- 9 Mr Ntanga was unaware that each invoice that forms the subject of the claim had its own contract number. He maintained that Mr Mboya told him that the close corporation only had a letter of appointment governing the relationship between the IDT and the corporation.
- 10 He denied that the plaintiff could not claim from the IDT because there was no contract, pointing out that the IDT paid the first invoice. He continued that the IDT never said the corporation had no claims against the IDT and that the IDT requested documents from Mr Mboya.
- 11 It was put to Mr Ntanga that the IDT paid the first invoice because the IDT received supporting information in relation to that invoice, and that there was no supporting information for the other invoices. Mr Ntanga denied that there were no supporting documents. He referred to correspondence in which Mr Mboya mentioned that he couriered documents to the IDT.
- 12 The plaintiff became aware that the IDT paid one of the invoices. Mr Mboya did not pay the money to the plaintiff. The IDT paid the invoice despite being notified of the cession. The IDT made the payment two years after the plaintiff instituted these proceedings. The plaintiff was unaware that the IDT had been engaging with the corporation. The IDT never engaged the plaintiff about payments. Mr Ntanga was surprised that the IDT engaged with the corporation when the corporation had ceded its claim to the plaintiff.

- 13 The defendant made its case as detailed below.
- 14 Ms Linnet Barnes gave evidence on behalf of the IDT. She is employed by the IDT as a programme manager. She is responsible for payments to service providers. She became aware of the appointment of the corporation in 2018, when she was closing out several projects.
- 15 The IDT does not dispute that the IDT had a contract with the corporation. The IDT also does not dispute that the corporation did the work. The invoices relied upon by the plaintiff are claims for payment of disbursements. She expected the corporation to have documentation to justify the IDT paying the disbursements.
- 16 She had several exchanges with Mr Mboya regarding payment to the corporation. The initial exchange pertained to two invoices. Those invoices were not paid because the program had run out of funds. She later became aware of six other invoices which Mr Mboya said were outstanding. The invoices pertained to claims for disbursements.
- 17 Mr Mboya demanded payment after more than five years had elapsed in relation to the projects. The projects were concluded in 2012. The IDT did not have records and requested Mr Mboya to provide the IDT with supporting documentation. The IDT required the documents to justify requesting the department of education, a client of the IDT, to pay for the disbursements. The IDT specified to Mr Mboya that it required the following: a copy of the appointment letter as evidence of appointment. This was because the project was completed a long time ago; a copy of the

professional contract with the IDT. This was to verify the fee scale and disbursement applicable to the project; a statement of account; attendance registers, minute of meetings, reports etc. as part of disbursements claim documentation; and signed close out reports and final accounts.

- 18 Ms Barnes attended a meeting with Mr Mboya on 5 March 2022. She told Mr Mboya that the IDT would be unable to claim the money from the department of education without supporting documentation. She subsequently wrote to Mr Mboya on 3 June 2020, advising that the IDT rejected making a payment because the invoices had no supporting documents.
- 19 She was given some loose documents that were meant to have been sent by Mr Mboya. She could not confirm whether the documents given to her were all documents that Mr Mboya said he had couriered to Ms Mohlauli, an employee of the IDT. She also could not confirm whether Ms Mohlauli carried out the verification mentioned in Mr Mboya's e-mail of 19 February 2020. She and her team undertook their own verification. She expected the corporation, as a service provider, to have documents required by the IDT.
- 20 She explained how the IDT got to pay invoice 2056 in 2020. That was because the IDT had all the supporting documents it required to pay. She also explained why the IDT could not discover various documents. That was because the projects were completed in 2012 and because employees of the IDT worked from different offices during the period.

- 21 The regional office was unaware of the cession. That is why she and others continued to communicate with the corporation. All IDT contracts prohibit service providers from effecting a cession. She agreed that a service provider cannot be stopped from effecting a cession where there is no agreement preventing a cession.

Analysis

- 22 I conclude that the plaintiff established the existence of a contract of cession between the plaintiff and the corporation. The IDT did not show that the corporation was barred from concluding a contract of cession. Ms Barnes did not substantiate her evidence that the IDT, in its contracts, preclude a service provider from effecting a cession. The IDT did not give evidence on a contract between the IDT and the corporation, which prevented the corporation either from effecting a cession generally or from having to first seek the IDT's consent before concluding a contract of cession.
- 23 The cession pertained to claims by the corporation for payment of invoices for work done by the corporation pursuant to the IDT having appointed the corporation to render services. The invoices referred to in evidence are the bases for the corporation's claim against the IDT.
- 24 The plaintiff had to show that the corporation's claim against the IDT was ripe; meaning that it had been established that the corporation could oblige the IDT to pay. The plaintiff did not show that the claims were ripe.

- 25 The mere presentation of invoices is not sufficient for the plaintiff to have obliged the IDT to pay. The plaintiff accepted that the corporation had to have shown that the conditions for the IDT to pay had been met. Those conditions, on the evidence, were for the corporation to have demonstrated that the disbursements could be paid by supplying supporting documentation.
- 26 Disbursements, on the evidence, could be paid only once the corporation had shown that the supporting documents for each invoice had been made available. There was no dispute as to the make-up of the required supporting documents. These were set out in Ms Barnes' communication to Mr Mboya.
- 27 The plaintiff, through Mr Ntanga's evidence, relied wholly on what Mr Mboya told Mr Ntanga regarding supporting documents for the invoices. Indeed, Mr Ntanga pointed referred to Mr Mboya's e-mail in which Mr Mboya wrote that he had couriered supporting documents to the IDT. There was no evidence as to what documents, precisely, were sent to the IDT. Ms Barnes gave evidence that she and her team conducted a verification, and that she (Ms Barnes) was given some loose documents said to have been sent by Mr Mboya. Ms Barnes was adamant that documents given to her were not sufficient. She was the employee at the IDT responsible for confirming payments to service providers. She also gave a description of the procedure followed before the IDT would pay a service provider.

- 28 Ms Barnes pointed out that it was imperative for the IDT to be given the documentation, given that the claims were made late; more than five years after the projects were concluded. The IDT itself did not have the records. Ms Barnes mentioned in her evidence that she expected the service provider to have the documents to substantiate the claims for disbursement.
- 29 One of the required documents was the contract between the IDT and the corporation. There was a debate whether the relationship between the IDT and the corporation was governed solely by, as Mr Mboya told Mr Ntanga, a letter of appointment. Mr Ntanga accepted that only Mr Mboya could confirm whether there was an agreement in addition to a letter of appointment. Mr Mboya was not called to give evidence. Mr Ntanga was unaware that each invoice that forms the subject matter of the cession is in relation to a different contract. Indeed, each invoice references a different “contract number.”
- 30 Ms Barnes explained to Mr Mboya that the IDT required copies of the agreement because such an agreement would set out how fees and disbursements were to be paid. The plaintiff, of the documents requested by Ms Barnes, relied on the invoices in support of the claim against the IDT. The plaintiff did not give evidence that Mr Mboya sent particular documents to the IDT. The plaintiff had no independent knowledge of what documents were sent by Mr Mboya. The plaintiff did not suggest that Ms Barnes’ statement that the agreement requested by the IDT would set out

the basis for payment of both fees and disbursements due to the corporation.

- 31 Ms Barnes, following extensive correspondence with and a physical meeting with Mr Mboya, finally concluded that there were no documents to support the corporation's claim. She wrote to Mr Mboya and advised him accordingly, namely that the IDT would not pay because the corporation failed to submit supporting documentation.
- 32 The plaintiff has not shown that the IDT was obliged to pay disbursements merely on presentation of invoices. The invoices were not substantiated. The plaintiff did not show that the conditions for paying the disbursements were met. There were no documents supporting payment. Mr Mboya accepted that the corporation had to provide supporting documentation before the invoices could be paid.
- 33 Mr Ntanga could not verify that Mr Mboya submitted the required documentation. I formed the impression that Ms Barnes and her staff were diligent in searching for documents, as may exist, that would support payment of the claims. There was no suggestion that IDT employees suppressed documents to avoid paying the corporation.
- 34 The Court cannot oblige the IDT to pay for disbursements when it had not been shown that information that supports the making of payment was to hand. The IDT explained how invoice 2046 got to be paid. Officials at the regional office were unaware of the cession. That is why those officials

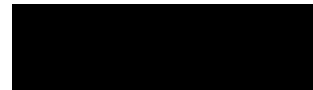
continued their dealings with Mr Mboya. Mr Mboya retained the payment knowing very well that the corporation had ceded its claim to the plaintiff.

35 The plaintiff has not shown that the IDT was obliged to pay disbursements reflected in the invoices that underpin the cession agreement. The plaintiff did not substantiate that the invoices ought to be paid.

36 I make the following order:

(1) The plaintiff's claim is dismissed.

(2) The plaintiff is ordered to pay costs.



O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the plaintiff:

S Abrahams

Instructed by:

Mr Ntanga Nkuhlu Inc.

Counsel for the defendant:

N E Memela

Instructed by:

Maphoso Mokoena Inc.

Date heard:

3 – 4 September 2025

Date of judgement:

15 September 2025