REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 013084/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
02/10/2025 DATE	Mahosi. SIGNATURE

In the matter between:

NEW CLICKS SOUTH AFRICA (PTY) LTD Plaintiff

and

NELISWA PUMLA BULOSE Defendant

JUDGMENT

Mahosi, J

Introduction

[1] This is an application for summary judgment in which the plaintiff claims payment of the sum of R537 295.00 from the defendant, together with interest and costs. The amount represents the outstanding balance of a sign-on bonus and relocation costs, which became repayable by the defendant upon her resignation from the plaintiff's employment The defendant opposes the application.

Background facts

[2] In July 2020, the plaintiff offered the defendant a position as an Inventory Manager, requiring her to relocate from Cape Town to Johannesburg. On 22 July 2020, they signed two agreements: a Sign-on Bonus Agreement, under which the plaintiff would pay the defendant a bonus of R500 000.00, and a Relocation Cost Agreement, covering relocation expenses of up to R250 000.00.

[3] Both contracts specify that the defendant must repay a bonus of R500 000.00 and a relocation allowance of R250 000.00 if her employment ends for any reason other than death, disability, or redundancy within 36 months of the employment commencement date. Additionally, the contracts state that the plaintiff is authorised to deduct any amounts owed to the defendant from the total sum that must be repaid.

[4] The defendant commenced employment on 01 September 2020 and received the full amounts of R500 000.00 and R250 000.00, respectively. On 01 November 2021, the defendant resigned from her employment. This resignation fell squarely within the 36 months contemplated in both agreements. Consequently, the repayment obligations in both agreements were triggered.

[5] The plaintiff alleges that at the time of termination, it owed the defendant R212 705.00 (comprising notice and leave pay). After deducting this amount from the total repayable sum of R750 000.00, a balance of R537 295.00 remains outstanding. It is this balance for which the plaintiff seeks summary judgment.

The defence

[6] In her plea, the defendant acknowledges the validity of the agreements, confirms receipt of the funds, and confirms that her resignation occurred within 36 months of starting her employment. Her defence relies on a claim of set-off, which includes a pension fund contribution of R188 913.49 allegedly owed by the plaintiff and an alleged SARS tax liability of R112 500.00 she was "overcharged" because the plaintiff classified the relocation allowance as taxable income.

Applicable law

[7] The principles governing summary judgment are trite. The Court must determine whether the defendant has disclosed a *bona fide* defence to the claim. The defence must be pleaded with sufficient clarity and completeness to satisfy the Court that there is a triable issue. A defence that is vague, bald, or unsubstantiated will not suffice.[1]

[8] As stated, the defendant's liability to repay the principal sum of R750 000.00 is admitted and is clear from the agreements. The only issue is the quantum of the set-off. The requirements for set-off were summarised in *Maharaj v Sanlam Life Insurance Ltd and others*[2], where the Court stated that:

> "[8] To succeed in its defence of set-off, the first respondent must prove the following:
>
> (a) the indebtedness of the applicant to the first respondent;
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> (b) that the first respondent's debt was also due and legally payable;
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> (c) that both debts are liquidated debts, in the sense that:
>
> (i) they are based on liquid documents,
>
> (ii) they are admitted,
>
> (iii) their money value has been ascertained or is ascertainable;
>
> (d) that the reciprocal debt was owed by the applicant to the first respondent." [Footnotes omitted]

Evaluation

The Pension Fund Contribution

[9] The defendant claims that she submitted a withdrawal request to the pension fund, but the plaintiff failed to fulfil its administrative role, thereby preventing her access to her funds. The plaintiff disputes that it owes the defendant a pension contribution and avers that she is fully entitled and obliged to recover the amount from the fund. To the extent that the defendant has provided no evidence or legal basis in her plea or opposing affidavit to show that his pension contribution is owed

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[1] See: *Maharaj v Barclays National Bank* 1976 (1) SA 418 (A), p 423A-H.

[2] [2011] 2 ALL SA 571 (KZD).

to her by the plaintiff and, therefore, due and legally payable, her pension claim lacks merit and cannot be set off against the plaintiff's claim.

The SARS Tax Liability

[10] The defendant’s claim here is more complex. She avers that the plaintiff paid the R250 000.00 relocation allowance directly to her, rather than to the suppliers, despite her objections. She further claims that an HR officer assured her that the amount would be reflected on her IRP5 as tax-exempt, which did not happen, resulting in her being "overcharged" by SARS.

[11] This claim faces several difficulties. Firstly, the defendant is essentially claiming damages from the plaintiff for a tax liability levied by SARS. The causal connection between the plaintiff’s payment method and the subsequent tax assessment by SARS is not straightforward. The tax treatment of the payment is ultimately a matter between the defendant and SARS, governed by the Income Tax Act. Secondly, the alleged representation by the HR officer may give rise to a dispute of fact. However, even if proven, a representation about a tax outcome made by a non-tax expert may not be sufficient to establish a legally enforceable obligation on the plaintiff to indemnify the defendant for the tax consequences.

[12] Thirdly, and most critically, the defendant has not pleaded that she has actually paid this amount to SARS. A liability is not a loss until it is paid. A mere contingent liability to a third party (SARS) does not, without more, constitute an immediately enforceable debt owed by the plaintiff to the defendant. The defendant has not shown that she has suffered an actual loss for which the plaintiff is liable. Consequently, I find that the defendant has failed to establish a *bona fide* defence or a valid counter-claim in relation to the alleged SARS tax liability.

The Performance Incentive

[13] The defendant’s affidavit resisting summary judgment refers to a "performance short incentive" of R155 152.56, which is confirmed in a plaintiff's letter but was not pleaded in the defendant's plea. A fundamental rule of pleading is that a party must plead all material facts upon which it relies. A defence not pleaded cannot

be raised for the first time in the affidavit resisting summary judgment.[3] This claim is therefore not properly before the Court and cannot be considered as part of a set-off in this application.

Conclusion

[1] In light of the above, the defendant has not established a *bona fide* defence. The plaintiff is, therefore, entitled to summary judgment. The defendant's repayment obligation is R750 000.00. After deducting the admitted set-off of R212 705.00, the balance due is R537 295.00.

Order

[15] Accordingly, the following order is made:

1. Summary judgment is granted in favour of the plaintiff.

2. The defendant is ordered to pay the plaintiff the sum of of R537 295.00 plus interest at rate of 11.25 per annum from the date of demand to the date of final payment.

3. The defendant is ordered to pay the costs of the application on a party and party scale B.

Mahosi.

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JUDGE OF THE HIGH COURT
JOHANNESBURG

[3] See: *Nedbank Limited v Uphuhliso Investments and Projects (Pty) Ltd and Others* [2022] 4 ALL SA 827 (GJ).

Date of Hearing:	02 October 2025
Date of Judgment:	30 September 2025

Appearances:

For the Applicants:	Adv. Z Ngwenya
Instructed by:	Clyde & Co Attorneys
For the third respondent:	Adv S Mfeka
Instructed by:	NM Bhengu Attorneys