

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 096849/2023

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

20/10/2025

SIGNATURE

DATE

In the matter between:

KGATELOPELO LIME NORTHERN CAPE (PTY) LTD

Applicant

and

UBUNTU LIME HOLDINGS (PTY) LTD

Respondent

JUDGMENT

NTHAMBELENI, AJ

Introduction

- [1] This is an application by Kgatelopele Lime Northern Cape (Pty) Ltd (“the applicant” or “KP Lime”) for summary judgment in the sum of **R9,758,797.60** against Ubuntu Lime Holdings (Pty) Ltd (“the respondent” or “Ubuntu”) for payment of amounts owing on unpaid invoices arising from the supply of lime and related materials.
- [2] The claim arises out of a commercial agreement between the parties in terms of which the applicant supplied lime and related products to the respondent. Despite repeated demands, the respondent has failed to pay the outstanding invoices.
- [3] The respondent filed a plea and an affidavit resisting summary judgment. The question for determination is whether the respondent has disclosed a *bona fide* defence as required by Rule 32(3)(b) of the Uniform Rules of Court.

Factual background

- [4] The applicant avers that it supplied lime and related products to the respondent at the latter’s request. The respondent accepted delivery and raised no dispute regarding the quality or quantity of the goods delivered.
- [5] Invoices totalling **R9,758,797.60** were issued by the applicant. Despite demand, the respondent failed to settle the invoices.
- [6] In its plea, Ubuntu denies the existence of a valid agreement between the parties, but simultaneously, admits experiencing financial hardship, which it says explains its failure to make payment.
- [7] However, in its affidavit resisting summary judgment, Ubuntu’s position shifts. It no longer denies the existence of an agreement; instead, it acknowledges that there was an agreement between itself and KP Lime as appears from pages 01–88 of the respondent’s affidavit at paragraph 26.

- [8] Ubuntu even refers to a specific example of KP Lime supplying lime and related products, as recorded in its affidavit (pages 01–87 at paragraph 2.6). It thus accepts that the applicant duly performed under the contract.
- [9] The respondent further contends that, following the conclusion of an Enterprise and Supplier Development Agreement, it had a “reasonable expectation” that all parties would make a reasonable profit, as appears from paragraph 2.4 of its affidavit. On this basis, Ubuntu seeks to avoid liability for the outstanding debt.
- [10] Additionally, Ubuntu raises two special pleas — the first relying on an arbitration clause (clause 12.1), and the second based on unspecified “allegations on the pleadings”. In its affidavit, Ubuntu also complains that KP Lime has attached documents contrary to Rule 32.

Legal framework

- [11] The principles governing summary judgment are settled. Rule 32 of the Uniform Rules of Court permits a plaintiff to apply for summary judgment where the defendant has no bona fide defence and merely seeks to delay the inevitable.
- [12] In *Maharaj v Barclays National Bank Ltd*,¹ the court held that the defendant must disclose fully the nature and grounds of the defence and the material facts relied upon therefor. A vague or contradictory averment does not meet this threshold.
- [13] Similarly, in *Breitenbach v Fiat SA (Edms) Bpk*,² the court held that a defendant resisting summary judgment must set out the defence with sufficient particularity to satisfy the court that, if proved at trial, it would constitute a valid defence.
- [14] The purpose of summary judgment was restated by the Supreme Court of Appeal in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*,³ where the court stated:

¹ 1976 (1) SA 418 (A) at 426A–C.

² 1976 (2) SA 226 (T).

³ [2009] ZASCA 23; 2009 (5) SA 1 (SCA) at [32].

“The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable or a sustainable defence of her/his day in court.”

Analysis

- [15] The respondent’s plea and affidavit are irreconcilable. In its plea, it denies the existence of an agreement. Yet, in its affidavit, it accepts that an agreement existed and that KP Lime supplied goods. The respondent cannot approbate and reprobate.
- [16] The acknowledgment of financial hardship by the respondent, both in its plea and affidavit, confirms that the failure to pay is not due to any legal dispute, but rather to inability to pay — which is not a defence in law.⁴
- [17] The argument that the debt should not be enforced because the respondent had a “reasonable expectation of profit” under the Enterprise and Supplier Development Agreement is misconceived. Contractual obligations are not suspended by subjective expectations of profitability.
- [18] The reliance on the arbitration clause (clause 12.1) is similarly misplaced. The respondent has not filed an application to stay the proceedings under section 6(1) of the Arbitration Act.⁵ A mere reference to an arbitration clause in the plea, without a proper procedural invocation of arbitration, does not oust this Court’s jurisdiction.⁶
- [19] The respondent’s further complaint that KP Lime attached documents contrary to Rule 32 is of no moment. Rule 32(2)(b) expressly allows the applicant to annex documents supporting its claim.

⁴ See *Arend and Another v Astra Furnishers (Pty) Ltd* 1974 (1) SA 298 (C) at 303G–H.

⁵ Act 42 of 1965.

⁶ See *PCL Consulting (Pty) Ltd t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Ltd* [2007] ZASCA 9; 2009 (4) SA 68 (SCA) at [7].

[20] In totality, the respondent's allegations are contradictory, unsubstantiated, and commercially implausible. They reveal no bona fide defence but rather a deliberate attempt to delay payment of an undisputed debt.

[21] The applicant has, on the other hand, established a clear and enforceable claim based on the delivery of goods and invoices rendered. The respondent does not dispute receipt of the goods or the correctness of the invoices.

Conclusion

[22] In these circumstances, the respondent has failed to disclose any bona fide defence as required by Rule 32(3)(b). The applicant is therefore entitled to summary judgment in the full amount claimed.

[23] This is precisely the type of matter to which the principle articulated in *Joob Joob Investments* applies: the respondent is "kicking the can down the road" in the hope of postponing the inevitable. The Court will not countenance such abuse of process.

Order

Summary judgment is granted in favour of the applicant against the respondent for:

- 1.1 Payment of the sum of **R9,758,797.60**;
- 1.2 Interest on the abovementioned amount at the prescribed rate of interest, *a tempore mora* to the date of payment;
- 1.3 Respondent is ordered to pay costs on party and party scale B;
- 1.4 Respondent's purported defences are dismissed as lacking bona fides and raising no triable issue.


RR NTHAMBELENI, AJ
ACTING JUDGE GAUTENG DIVISION
JOHANNESBURG

Date of Hearing: 08 October 2025

Date of Judgment: 20 October 2025

Appearances:

For the Applicant: Michael Dafel
Instructed by: Zain Randeree & Suhail Hoosen

For the Respondent: Pieter Coetzee
Instructed by: Baloyi AW & Associates