



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

Case Number: **032785/2023**

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE: 15 October 2025

SIGNATURE: **JANSE VAN NIEUWENHUIZEN J**

In the matter between:

JAN JOHANNES BENJAMIN VAN ZYL

Applicant

and

KHESI MOSES DIALE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

Introduction

- [1] The applicant claims summary judgment against the respondent for payment of an amount of R 712 510, 00 with interest and costs. The application is opposed by the respondent.

Pleadings

- [2] The applicant, an advocate, performed professional services for the respondent, an attorney, in litigation matters. The applicant alleges that the respondent has failed and/or neglected to pay some of the invoices in respect of the services rendered. In support of the aforesaid allegation, the applicant attached 29 detailed invoices for the period 7 February 2018 to 22 May 2020.
- [3] In response to the detailed invoices, the respondent pleaded that payments were made to the plaintiff and attached proof of the following payments:

Date:	Amount
29.1.2019	R 51 750, 00
13.1.2020	R 77 625,00
2.5.2019	R 51 750, 00
8.2.2019	R 22 500, 00
19.2.2019	R 69 000,00
15.5.2020	R 51 750,00
16.3.2022	R 198 375,00
4.2.2019	R 22 500,00
19.11.2018	R 43 125,00
7.12.2018	R 103 500, 00
4.3.2019	R 25 875, 00
Total	R 445 125,00

- [4] The amount is less than the amount claimed, and the respondent did not plead in respect of which invoices the payments were made.

Summary judgment

- [5] In response to the plea of payment, the applicant attached a reconciliation history report to the affidavit in support of the claim for summary judgment. The payments made by the respondent are reflected in the report and were credited to various historically outstanding invoices. In the result and notwithstanding the payments referred to by the respondent in his plea, the amount outstanding is the amount claimed herein, R 712 510,00.

Defence and discussion

- [6] The respondent raised various points *in limine* in his answering affidavit.

First point in limine : non-compliance with rule 32(2)(c)

- [7] Rule 32(2)(c) reads as follows:

“(c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 15 days from the date of the delivery thereof.”

- [8] The respondent states that the summary judgment application did not, in contravention of the rule, contain a hearing date and should on this basis be dismissed with costs.

- [9] The applicant pointed out that in terms of the Consolidated Practice Directive of this Division, a date for the hearing of a summary judgment application is only allocated after there has been compliance with a host of requirements.

- [10] The point *in limine* is overly technical and opportunistic. The reason why a date for the hearing of an application should be contained in the application is manifestly obvious; to enable a respondent to appear on the said date in court to oppose the matter. In view of the practice in this Division and as soon as a date is allocated by the Registrar, an applicant serves a notice of set down on the respondent, which notice contains the date of hearing.
- [11] In *casu* the notice of set down for the hearing of the summary judgment application was duly served on the respondent and the respondent was represented during the hearing of the application.
- [12] In the result, there was substantial compliance with the rule, and I have no hesitation in dismissing the point out of hand.

Second point in limine: liquid document or liquidated amount

- [13] The respondent alleges that the invoices attached to the particulars of claim were not taxed by the taxing master and are therefore not liquidated documents or do not represent a claim for a liquidated amount as contemplated in rule 32(1). In the result, the applicant's application stands to be dismissed as it does not fall within the ambit of rule 32.
- [14] A similar objection was raised in the matter of *Tredoux v Kellerman* 2020 (1) SA 160 (C) at para [18]:

[18] the next question is whether each of the plaintiffs' claims, being for professional fees, is for 'a liquidated amount in money', as required by subrule (1). A liquidated amount of money is an amount which is either agreed upon or which is capable of 'speedy and prompt ascertainment' or, put differently, where ascertainment of the amount in issue is 'a mere matter of calculation'. In my view the plaintiffs' claims in question do not fall into this category: they involve an enquiry into the nature and extent of the professional services rendered, the reasonableness of fees charged, and so on. These are not mere matters of calculation; they are matters for taxation, which fall within the compass of duties

of the taxing master. It is that official, and not the court, who must determine the reasonableness of professional fees charged by legal practitioners.”

- [15] The mere fact that a claim is for professional services rendered by an advocate does not entail that the claim is not a liquidated amount. The test whether any claim is a claim for a liquidated amount depends on the issues in dispute.

- [16] In *Tredoux* the advocate and attorney claimed payment from a former client for their fees for professional services rendered in respect of a litigious matter. The client disputed the amount claimed for the services rendered. In view of the issue in dispute between the parties, the court was correct in holding that an enquiry into the nature and extent of the professional services rendered and the reasonableness of the fees charged should first be determined by the taxing master. The claim amount was thus not easily ascertainable, was not a liquidated amount and did not fall within the ambit of rule 32.

- [17] The reasonableness of the applicant’s fees is, however, not in dispute in *casu*. A mere calculation of the amounts claimed in the invoices renders the claim capable of speedy and prompt ascertainment.

- [18] In the result, the second point *in limine* is dismissed.

Third point in limine: non-compliance with rule 32(1)

- [19] The respondent contends that the reconciliation history report relied upon by the applicant, is a new statement of account which was not the basis of the applicant’s claim in the particulars of claim. This is in contravention of the provisions of rule 32(1) and in the result, the summary judgment application should be dismissed for non-compliance with the rule.

- [20] The reconciliation history report is not a new statement of account. The report reflects all the invoices that form the basis of the applicant’s claim and in view of the respondent’s pleaded defence of payment, the report merely indicates

the allocation of the payments made by the respondent towards other invoices that were due and payable.

- [21] Rule 32(2)(b) specifically provides that an applicant must “*explain briefly why the defence as pleaded, does not raise any issue for trial*”. In attaching the reconciliation history report the applicant did precisely that. The report explains why the pleaded defence of payment does not raise an issue for trial.
- [22] One should bear in mind that the purpose of summary judgment proceedings is to enable an applicant with a clear case to obtain judgment without delay.
- [23] It is for this reason that a respondent with a *bona fide* defence must set out the defence in sufficient detail to satisfy the court that a triable issue exists. In the often-cited matter of *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A), the court explained what is required from a respondent with a *bona fide* defence as follows at 426A-D:

*“All that the Court enquires into is: (a) whether the defendant has ‘fully’ disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law. If satisfied on these matters the Court must refuse summary judgment, either wholly or in part, as the case may be. The word ‘fully’, as used in the context of the Rule (and its predecessors), has been the cause of some Judicial controversy in the past. It connotes, in my view, that, while the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a bona fide defence. (See generally, *Herb Dyers (Pty.) Ltd. v Mohamed and Another*, [1965 \(1\) SA 31 \(T\)](#); *Caltex Oil (SA) Ltd. v. Webb and Another*, [1965 \(2\) SA 914 \(N\)](#); *Arend and Another v. Astra Furnishers (Pty.) Ltd.*, *supra* E at pp. 303 - 4; *Shepstone v. Shepstone*, [1974 \(2\) SA 462 \(N\)](#)). At the same time the defendant is not expected to formulate his opposition to the claim with the precision that would be required of a plea; nor does the Court examine it by the standards of pleading. (See *Estate Potgieter v. Elliott*, 1948 (1) SA 1084 (C) at p. 1087; *Herb and Dyers case*, *supra* at p.32”*

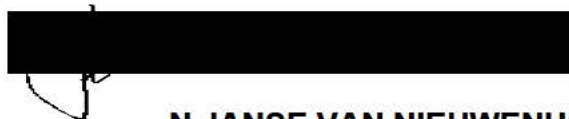
[24] In view of the detail contained in the invoices, one would have expect a detailed answer to the claim. The respondent's books of account naturally reflects when payment in respect of each invoice was made. Notwithstanding the aforesaid, the respondent failed to fully engage with the facts contained in the particulars of claim and, more specifically with the invoices attached to the particulars. In this regard, the respondent's proclaimed *bona fide* defence falls short of the test laid down in *Maharaj*, to wit: "he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a bona fide defence."

[25] In the result, the respondent failed to disclose a *bona fide* defence and the application for summary judgment must succeed.

ORDER

Summary judgment is granted against the respondent for:

1. Payment of the amount of R 712 510, 00;
2. Interest on the aforesaid amount *a temporae morae*;
3. Costs of suit, including counsel's fees on scale B.



N JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD: 08 September 2025

DATE DELIVERED: 15 October 2025

APPEARANCES

For the Applicant:

Adv Lisa Strydom

Instructed by:

Du Bruyn & Morkel Attorneys

For the Respondent:

Adv Lineo Liphoto

Instructed by:

Diale Attorneys