



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

Case Number: A2023-129937

(1)	REPORTABLE: ☒
(2)	OF INTEREST TO OTHER JUDGES: ☒
(3)	REVISED ☒
2025/11/28	
DATE	SIGNATURE

In the matter between:

TSHEPISO KENNEDY SIBANDZE

Appellant

And

SENTEO DIGITAL (PTY) LTD

1st Respondent

ZEENET MAHOMED

2nd Respondent

JUDGMENT

MOTHA J

- 1) Before us is an appeal against the Regional Court Magistrate's order for repayment of an amount of R308 000.00 paid to the appellant as loan.

The parties

- 2) The appellant is Tshepiso Kennedy Sibandze, an adult male.
- 3) The first respondent is Senteo Digital (Pty) Limited, a company with limited liability, registered and incorporated in terms of the laws of the Republic of South Africa. ("Senteo").
- 4) The second respondent is Zeenat Mohamed, an adult businesswoman.

The factual matrix

- 5) The facts of this matter are uncomplicated and can be summarized in the question: Were the respondents' monthly payments of R20 000.00 to the appellant, from August 2018 to November 2019, a loan or a salary?
- 6) To prove that the payments were a loan, as the respondents would have it, rather than a salary which the appellant suggested, the plaintiffs/respondents called two witnesses, Miss Zeenat Mohamed and Miss Lenushka Parannath. The defendant/Appellant took the stand as the sole witness to assert the opposite.

The version of the second respondent, Miss Z. Mohamed

- 7) The second respondent testified that she first met and became friends with the appellant in 2016 at The Project, a company in which they were both employed. After leaving The Project, she continued to work on freelance projects with the appellant.
- 8) In June 2018, she arranged a meeting between two of her friends, Maryna Prince and Lenushka Parannath, and the appellant to discuss the idea of starting a company. They all had distinct skill sets that could contribute to a new business. She provided strategic insights, and Ms Parannath, a former CEO, offered her expertise in procurement and business. Maryna Prince was the creative director and designer, while Tshepiso, the appellant, brought his web development expertise.

- 9) In August 2018, they held a directors' meeting to discuss the business scope, target clients, and that they would only take salaries as directors once the company was profitable and fair to everyone. Meanwhile, to help Ms Prince and Sibandze cover their expenses while growing the business, Ms Parannath and the second respondent offered their savings to support them.
- 10) They all worked from home, except when they held meetings at Ms Parannath's garage. At the end of September, Ms Prince left the company, and they hired a creative, Romaro Johary, with a gross monthly salary of R10,000.00.
- 11) Leading up to the appellant's involvement in the business, and on 26 June 2018, the second respondent and the appellant had a WhatsApp conversation, which proceeded as follows:

Second respondent: "No stress at all. Look, it is not going to be easy, but we are going to make it work and find our success."

Appellant: "Agreed. My only concern would be surviving and paying bills whilst we work through this."

Second respondent: "I got that covered, LOL. Send me what your current costs are, and we will cover your monthly bills."

Appellant: "Around 10K per month. Elmer put me on 19K at the beginning of the year."

"But let us chat about it when I see you because we need to figure out when to leave and the leave period as well."

Second respondent: "I was going to say I can guarantee you 20K a month."

- 12) Continuing their engagement on WhatsApp, in July 2018, the second respondent and the appellant concluded as follows:

Second respondent: "I am not sure how that works, but Len has that covered. You should net at like 20 000 at minimum though."

Appellant: "Okay, cool. You need my current payslip for anything?"

Second respondent: "Nope, it is all good. The accountant and Len will set up SARS and stuff this month. So, it will all be sorted soon enough."

- 13) Following these conversations, R20,000.00 was deposited into the appellant's bank account each month, referenced as "Senteo Salary" until July 2019, when it was referenced as "Loan". The second respondent testified that initially, they referred to the deposit in the appellant's account as salary because they lacked accounting knowledge. She stated that they forgot to update the reference to indicate it was a loan.
- 14) She emphasized that the loans she and Ms Parannath provided to the business would always be repaid once the company started making profits.
- 15) In evidence in chief, she discussed the company's decision to provide a loan instead of a salary. She testified as follows: "We did not have any money. Senteo was (sic) made no business made no profit." Essentially, she explained that the company did not have enough money to pay anyone a salary because it had not made a profit during its time in operation.
- 16) When asked if the loan was not disguised as a salary, she replied that in their year-end financial statements, it was always listed as a loan. In response to the suggestion that changing the payments from salary to a loan was done to avoid SARS, she vigorously disputed that.
- 17) Even under cross-examination, she disputed that the change was to avoid tax, as the business had no money and was operating at a loss. Furthermore, upon being asked to repay the loan, the appellant made a payment of R7,000.00, which proved that he knew about the loan, she added.
- 18) Under cross-examination, she explained that the company was registered in 2014 as Dancing In Heels. In 2018, they changed the name to Senteo Digital, which is the first respondent.

- 19) When it was put to her that the appellant was employed in the role of web designer, she accepted that statement. In response to the question about her statement that the appellant "should net at like R20k at minimum", she responded that she did not have an accounting background.
- 20) She was questioned about the reference to the payment into the appellant as a salary from August 2018 to June 2019, when it was changed to a loan. Her response was that the word salary was recorded and scheduled along with the recurring payment.
- 21) When asked about Ms Parannth, who has knowledge about how companies operate, did not spot the problem, she responded that it was an oversight and that they had an agreement. She mentioned that the appellant was not given a pay slip, nor an employment contract.
- 22) After stating that they were new in business and figuring things out, she asserted that their annual financial statements recorded it all as a loan.
- 23) She was referred to paragraph 13 of particulars of claim, which records: "It is submitted that where the proof of payments reference 'salary', this was a typographical error, and this should not be inferred as payment of a salary."
- 24) Her explanation of that paragraph was that she did not understand how things work, but Ms Parannath's perspective was that it was a typographical error.
- 25) When challenged that the legal proceedings were started to spite the appellant for leaving, she said:

"I am currently in loads of debt. This is not a spite situation. Like I am living hand-to-mouth at this point in time. So trying to reclaim some of the money that I loaned to the business is a fair, is fair in this situation. It is not a spite situation in any case. I loaned a lot of money to this business. I am now in debt because of that whereas somebody else gained from that debt."

- 26) Ms Parannath testified that she was the last director to be appointed to Senteo (first respondent) and was well-versed with the business side of things, as a former CEO. She was responsible for making payments and Senteo had one employee, Romano Joreree, who was paid a salary and given a pay slip.
- 27) She testified that the second respondent had agreed to assist with some expenses for the appellant and Ms Prince because they did not have savings, families or anything that they could fall back on. She also assisted with some of the expenses.
- 28) Further, she said that at that point, she was maxing out her credit cards and home loan, which had been refinanced. She was in severe debt.
- 29) Under cross-examination, she conceded that as a former CEO, she has a fair understanding of the financial accounts of a company, and the company relied on her knowledge. In response to the question about the statement: "You should net at like 20K minimum though," she said that her understanding was that the second respondent used the word 'net' not in a corporate sense.
- 30) Focusing on the word 'net', counsel asked her whether there was net amount in a loan. She said that she was not sure, because she had never had the experience of needing to deal with net amount in a loan.
- 31) When pressed for an answer, she said that she was not an expert and could not comment on it.
- 32) She testified that the reference to the word 'salary' was used for her to be able to handle the administration of the company. When asked about the different versions of why the word salary was used, she responded that everyone had a different understanding, and that they could describe the same thing differently.

- 33) Additionally, she testified that: "For Tshepiso it was, again, like I say, completely inadvertent because you have been working 13 years in corporate, you hear salary every month, I typed salary. When we realised it was, that this had actually happened, then we changed it to loan."¹
- 34) Finally, she commented that if they were to take that statement as true, then the logical conclusion is that this would have never been an equal partnership because that would have meant that she and Ms Mahomed were investing far more than anyone else in the business. She decried the unfairness of the situation and concluded that they worked for two years, assisted everyone else with their expenses and they got no assistance.

Mr. Sibandze

- 35) The appellant testified that he was working at the Project Advertising and Media and earning close to R19 000.00 at the time.
- 36) It is common cause that the applicant met the second respondent at The Project and became friends. Seeing that he was talented in web development, web design and graphic design, she recruited him.
- 37) He testified that he joined the first respondent in August 2018, and his duties and responsibilities were website development, data, analytics, and a bit of website design as well.
- 38) From the very beginning in June, when the conversation started, he claimed that he was guaranteed a monthly payment of R20 000.00 and that it was not a loan. Furthermore, he testified that he referred to his pay slip so that the second respondent could match his previous income. He believed, after deductions, his take-home pay was R20,000.00.

¹ Record page 66.

- 39) He asserted that the terms of his engagement were that he would be remunerated the same amount as he was earning at his previous company. What attracted him to the company, so his testimony went, was the freedom he would attain there.
- 40) He contested the versions that the use of salary as a reference was a typographical error and also disputed that it was used for administrative purposes.
- 41) On the payment of R7 000.00, he testified that he paid because he was under distress and was threatened with lawyers. Moreover, he offered to repay in instalments of between R500 and R1000 because his current employment was being threatened.
- 42) He maintained that he would not have left his previous work if he had been told that he would be lent money. Under cross-examination, he was unshaken in his assertion that the R20 000.00 was a salary.
- 43) When cross-examined about the absence of a payslip, he narrated that it was his experience even at his previous employment that the payslip is provided after some time or when he asked for it, as was the case at his last employment.

Issues

- 44) The crisp issue in this case is whether the payment of R20,000.00 per month made to the appellant from August 2018 to November 2019 was a salary or a loan.
- 45) The appellant contended that it was a salary, hence it was referenced as such in the bank statements for almost a year. The respondents argued otherwise, stating that it was a loan; accordingly, the reference was altered to reflect a loan on the bank statements from June 2019 until his departure in November 2019.

- 46) Therefore, the court *a quo* was confronted with two mutually destructive versions as tabulated above. To make matters worse, it is common cause that there was no written agreement memorializing the parties' agreement.

The law

- 47) It is trite that the court of appeal can only interfere with the decision of the trial court if there has been a misdirection. In *Special Investigating Unit v Phomella Property Investments (Pty) Ltd and Another*,² the court held:

“There are different tests for interference by an appeal court, depending on the nature of the discretion exercised by a lower court. As regards a loose discretion:

‘... an appellate court is equally capable of determining the matter in the same manner as the court of first instance and can therefore substitute its own exercise of the discretion without first having to find that the court of first instance did not act judicially.’

The approach on appeal against the exercise of a true discretion, however, is very different:

‘When a lower court exercises a discretion in the true sense, it would ordinarily be inappropriate for an appellate court to interfere unless it is satisfied that this discretion was not exercised —

“judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles”. [Footnote omitted.]

² (1329/2021) [2023] ZASCA 45; 2023 (5) SA 601 (SCA) (3 April 2023)

An appellate court ought to be slow to substitute its own decision solely because it does not agree with the permissible option chosen by the lower court.”³

- 48) Where there are two mutually destructive stories, the court in *National Employers' Mutual General Insurance Association v Gray*⁴ gave the following dictum:

"For a Court to hold that an onus resting upon a plaintiff has in fact been discharged, when there are two stories mutually destructive, the Court must be satisfied upon adequate grounds that the story of the litigant upon whom the onus rests, is true and the other false."

- 49) Under such circumstances, the analysis to be undertaken by a court is set out in the matter of *Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others*.⁵ At paragraph five (5), the court held:

"On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So too on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities ... The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."

³ Supra para 11.

⁴ 1931 AD 187 at 199.

⁵ (427/01) [2002] ZASCA 98; 2003 (1) SA 11 (SCA) (6 September 2002)

- 50) On the issue of credibility, the courts have pronounced themselves. To this end, the court in *Santam Bpk. v Biddulph*⁶ stated the following:

“Whilst a court of appeal is generally reluctant to disturb findings which depend on credibility it is trite that it will do so where such findings are plainly wrong (R v Dhlumayo and Another 1948 (2) SA 677 (A) 706). This is especially so where the reasons given for the finding are seriously flawed. Over-emphasis of the advantages which a trial court enjoys is to be avoided lest an appellant’s right of appeal ‘becomes illusory’ (Protea Assurance Co. Ltd. v Casey 1970 (2) SA 643 (7) 648 D-E and Munster Estates (Pty) Ltd v Killarney Hills (Pty) Ltd 1979 (1) SA 621 (A) 623H – 624A). It is equally true that findings of credibility cannot be judged in isolation but require to be considered in the light of proven facts and the probabilities of the matter under consideration.”⁷

Analysis

- 51) To me, the WhatsApp communications between the applicant and the second respondent hold the key to unlocking this case. The conversations concerned the assurance that the appellant would net R20 000.00 per month. *Ex-facie* the bank statements, the payments were referenced as salary payments. From these undisputed facts, the respondents should offer a sound and sensible explanation on a balance of probabilities:
- (a) why these facts do not suggest a reference to salary payment; and
 - (b) more importantly, why these facts refer to a loan.
- 52) Instead of a solid elucidation of the situation, the respondents proffered contradictory explanations concerning the use of the word ‘Salary’. In the Particulars of Claim, the respondents contended that it was a typographical error, which was contrary to what was said under oath at trial. While Ms Parannath’s version is that it was used for administrative purposes, the second respondent

⁶ 105/2003) [2004] ZASCA 11; [2004] 2 All SA 23 (SCA); 2004 (5) SA 586 (SCA) (23 March 2004

⁷ Supra para 5

testified that it was due to a lack of accounting knowledge that the word 'Salary' was used.

- 53) These answers are unsatisfactory. As a former CEO, Ms Parannath would have been familiar with the consequences of labelling a payment 'Salary'. Given the second respondent's email recording that the accountant and Ms Mohamed will set up SARS and related matters this month, it is puzzling why they would lack accounting knowledge.
- 54) Finally, a typographical error is self-explanatory. It means a mistake, such as a misspelling that occurs during typing. By no stretch of the imagination could the reference 'Salary' used over a period of ten months amount to a typographical error.
- 55) About these contradictions, the court *a quo* commented as follows:

"They each had their own reason for initially referencing the payment as salary. Miss Mohamed paid the amount at first form (sic) her own account and used a reverence (sic) that would remind her as to the reason for the payment of the money. She stated she used this reverence (sic) without really considering it and without an accounting background she was not aware what the correct reverence (sic) would be.

Miss Parannath used it purely for their reference. She state (sic) it was a typographical error and it was used due.to her lack of knowledge as to these things."⁸

- 56) Having examined the facts insofar as they related to the use of the word salary, it is essential to look at the use of the word 'net'. In their attempt to explain the use of the word 'net', the respondents' explanation moves from the sublime to the ridiculous. For the second respondent to state that she did not know the meaning of 'net' is bizarre, to say the least. She was not as naïve as she would

⁸ Judgment para 5.3.1

have us believe. At her previous company, The Project, she would have encountered the word 'net' when she received her salary.

- 57) Secondly, the respondents had access to the services of an accountant, hence, the appellant was informed that "the accountant and Len will set up SARS and stuff this month so it will be sorted soon enough."
- 58) Worse still, it could not come from the mouth of a former CEO, Ms Parannath, that she was not sure whether there was or was not a net amount in a loan.
- 59) Little wonder she sought refuge in the words "no comment" and "I am not an expert", when pressed for an answer.
- 60) The word 'net' is found in the salary/ remuneration parlance. In the employment environment, it means the amount left after all deductions have been made. In this case, it was used with the word salary. It brooks no debate that it meant what is left after deductions. Accordingly, it is highly improbable that the parties had a loan in mind.
- 61) Dealing with these contradictions, the court *a quo* held:
- "Both sides contradicted their versions in their papers during their testimony. The plaintiff's use of the word typographical error was not fully substantiated by the evidence of the witnesses."⁹
- 62) Therefore, the *court a quo*'s conclusion that the net reference "was more probable a mistake born from inexperience" is unsound.
- 63) In light of the proven facts and contradictions, the credibility findings of the court *a quo* are plainly wrong and unsustainable.

⁹ Judgment [5.6].

- 64) The respondents provided neither a comprehensive nor a cogent explanation on these issues. These contradictions go to the heart of the matter, and the court *a quo* misdirected itself by failing to give them due weight and consideration. The parties did not have a written memorial of their agreement, save for the WhatsApp conversations, which required a closer analysis. Read together with the rest of the evidence, these contradictions are material.
- 65) Furthermore, the court *a quo* misdirected itself in seeking the appellant to prove that the payments were salaries. The appellant did not bear any such onus. The onus was and remained on the respondents to prove that the payments were a loan.
- 66) It is prudent to refer to the court *a quo*'s conclusion on the WhatsApp communication between the second respondent and the appellant: "This can be a discussion as to a loan or a salary"¹⁰ which underscores this Court's conclusion that the plaintiff failed to discharge its onus.
- 67) The respondent submitted that the financial statements always reflected that the payments were a loan. On this issue, the respondents could not explain the considerable discrepancy between the purported loan of R120 000.00 by January 2019 as computed in the particulars of claim and the R51 362.00 loan to T.K. Sibande according to the "Financial Statements for the 8 month (sic) period ended 31 January 2019."
- 68) Finally, the respondents stated *ad infinitum* that the company did not have any funds and was in the red as it was not generating any profit. To be precise, it was in the ICU. Under the Company Act 71 of 2008, specific requirements must be met before a company can loan money to its directors, and these requirements were not complied with, let alone the solvency and liquidity tests.¹¹

¹⁰ Supra [5.11]

¹¹ Section 45(3)

- 69) The reality is that the second respondent and Ms Parannath took money out of their own pockets and lent it to the company to keep its fire burning, hoping it would turn the corner and they would recover their investments. Sadly, it never did. One thing is for sure in this case: the respondents failed to prove that the payments to the appellant were a loan by the company to him.

Costs

- 70) The issue of costs is well-settled in our law. The costs follow the result, and I do not intend to interfere with that well-trodden path.

Order

1. The appeal is upheld with costs, including counsel's fees on scale C.
2. The order of the Regional Court for the Regional Division of Gauteng, held at Randburg under case number GPRANRC 1458/2021 is set aside and replaced with the following:

- 2.1 The plaintiffs' claim is dismissed with costs, including the costs of advocate, preparation and witness fees.



MP MOTH A
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

I agree:


S LIEBENBERG
ACTING JUDGE OF THE HIGH
COURT GAUTENG LOCAL
DIVISION, JOHANNESBURG

APPEARANCES:

Date of Hearing: 02 September 2025

Date of Judgment: 20 November 2025

For Applicant: Att Voyi
Instructed by Voyi Incorporated Attorneys

For Respondents: Adv V Pillay
Instructed by: Monica Molapisi Attorneys