**IN THE HIGH COURT OF SOUTH AFRICA**
**KWAZULU NATAL DIVISION: PIETERMARITZBURG**

Case No: 427/25P

In the matter between:

**AFRI IN TRANSIT (PROPRIETARY) LIMITED** **PLAINTIFF**
**(Registration number: 2016/123531/07)**

and

**NOMAPHASI TRANSPORT AND LOGISTICS** **DEFENDANT**
**PROPRIETARY LIMITED t/a RT COAL**
**(Registration number: 2019/613569/07)**

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**ORDER**

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The following order is made:

1. The defendant's first special plea is dismissed.
2. The defendant is ordered to pay the sum of R913 866.97 to the plaintiff;
3. The defendant is ordered to pay interest on the aforesaid amount at the rate of 11.5%, calculated from the date of 1 December 2023;
4. The defendant is ordered to pay the costs of the summary judgment application.
5. The defendant is granted leave to defend the balance of the plaintiffs claim in the action with cost to be in the cause.

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# JUDGMENT

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**Pillay AJ:**

[1] The plaintiff, Afri In Transit (Pty) Ltd, instituted an action against the defendant Nomaphasi Transport and Logistics Proprietary Limited (Nomaphasi) trading as RT Coal. The plaintiff's action is for payment of the sum of R8 519 837 (eight million, five hundred and nineteen thousand, eight hundred and thirty-seven rand) together with interest.

[2] The defendant entered an appearance to defend the action and delivered two special pleas and a plea to the merits of the claim. The plaintiff filed an application for summary judgment accompanied by a sworn statement alleging that the defendant has not disclosed a *bona fide* defence against the plaintiff's claim and that that the defendant admits a number of essential allegations in the plaintiff's particulars of claim.

[3] In resisting summary judgment, the defendant's special pleas relate to that of non-joinder and misjoinder, whilst its main defence to the claim is that it has established a bona fide defence which requires that the issues in dispute require ventilation at trial.

[4] There is accordingly one issue for determination, that being whether the defendant has disclosed a *bona fide* defence to the plaintiff's claim. It is necessary to consider the plaintiff's pleaded case and whether the defendant has raised a triable and *bona fide* defence.

[5] The plaintiff alleges that during or about January 2023, the plaintiff and defendant entered into an oral agreement, under which the plaintiff was to periodically acquire coal from the defendant. In concluding the agreement as aforesaid, the plaintiff was duly represented by Makame Monnakgotla ('Mr Monnakgotla'), alternatively

another duly authorized representative of the plaintiff, and the defendant was duly represented by Makusi Richard Mazibuko (‘Mr Mazibuko’).

[6] It was agreed that the defendant would, for each individual order received, furnish and transport coal, to the plaintiff, with the cost of each delivery to be mutually established by both parties at the time the order was placed, and that the plaintiff would make payment in advance to the defendant for each order of coal before it was delivered to the plaintiff.

[7] During or about June 2023, the plaintiff ordered 5 000 tons of coal from the defendant, at a price of R600 per ton excluding value added tax (VAT), for the aggregate amount of R3 450 000 inclusive of VAT. The defendant issued an invoice to the plaintiff for the sum of R3 450 000.

[8] In July 2023, the plaintiff ordered a further 10 000 tons of coal from the defendant, at an agreed price of R600 per ton, excluding VAT, for the aggregate amount of R6 900 000. The defendant again invoiced the plaintiff in aforesaid amount. Consequently, based on the invoices issued, the defendant was obliged to supply and deliver a total of 15 000 tons of coal for the total cost of R10 357 000.

[9] The plaintiff alleges that it duly performed its obligations in terms of the agreement and remitted three separate payments, each amounting to R3 450 000, to the defendant on the specific dates of 30 June 2023, 31 July 2023, and 7 August 2023.

[10] The plaintiff alleges that the defendant breached the terms of the agreement by failing to deliver the full quantity of coal that the plaintiff ordered. The plaintiff alleges that the defendant only delivered 2 652 tons of the 15 000 tons of coal that it ordered, and for which the plaintiff paid for and accordingly failed to deliver 12 348 tons of coal.

[11] Following the defendant's breach of contract, the plaintiff cancelled the agreement and communicated its election to the defendant. The plaintiff pleads in the alternative that the parties orally agreed to terminate the agreement in November 2023, and that it became entitled to claim restitution in the amount of R8 519 837.

[12] On the 12 January 2024, the defendant, duly represented by Mr Mazibuko, acknowledged the outstanding quantities of coal in the amount of 12 900 tons and recorded that the defendant undertook to repay the plaintiff in monthly instalments of R1 500 000. The defendant had simultaneously provided a payment reconciliation for 4 140 tons of coal to be taken into account.

[13] The defendant in its first special plea of misjoinder, alleges that the entity known as Nomaphasi exists separately from the entity known as RT Coal (Pty) Ltd, which has the registration number: 2019/535475/07 ('RT Coal') and that the plaintiff ought to have joined the two entities and cite them separate from each other.

[14] It is clear that the plaintiff has named only one entity as the defendant, that being Nomaphasi Transport and Logistics (Pty) Ltd, registered under number 2019/613569/07, which conducts business as RT Coal. It is also undisputed that this particular entity was the one that issued the invoices to the plaintiff and received the payments previously mentioned. The invoices, which the defendant acknowledges, explicitly list the defendant's business trading name. The defendant's first special plea is accordingly without merit and does not constitute a *bona fide* defence.

[15] The defendant's second special plea of non-joinder, relates to the omission of a necessary party, that being Mamokebe Investments (Pty) Ltd, or 'Mamokebe', which entity allegedly owes 4 140 tons of coal to the plaintiff. The plaintiff has countered this special defence by pointing out that the current claim does not seek the delivery of coal, as the plaintiff is seeking the reimbursement of funds previously paid to the defendant for coal that was never delivered.

[16] I agree that the particulars of claim clearly demonstrate that the plaintiff's claim is against the defendant, and that it is entitled to sue the defendant it alleges is indebted to it. The allegation that the plaintiff allegedly sued the wrong party, which is in any event was not supported by the common cause documents, is not a basis for a special plea of misjoinder.

[17] The determination of whether all interested parties have been properly included in a specific action is dependent on how and to what degree, a court's eventual ruling

might impact the interests of third parties. The test is, therefore, whether or not a party has a direct and substantial interest in the subject-matter of the action, that is, a legal interest in the subject-matter of the litigation which may be affected prejudicially by the judgment of the court.[1]

[18] The second special plea is premised on the contention that there is a non-joinder of Mamokebe, an entity which has an interest in the relief claimed against the defendant, being repayment of amounts paid to the defendant by the plaintiff. The affidavit resisting summary judgment also makes reference to the second special plea and the involvement of Mamokebe.

[19] It is clear that the plaintiff makes the election as to the party that it intends to sue. The party that the plaintiff elects to sue is based on its pleaded case, and which in this case is the defendant. The plaintiff has pleaded that it is the defendant that is indebted to it, and if the court finds that the defendant is not the correct debtor, then the plaintiff's claim must fail, as the incorrect party would have been sued.

[20] In *Shingadia v Shingadia*,[2] Goldin J summed up the position as follows: -

'There is also authority for the view that a defendant has been allowed to demand a joinder of a party as of right in cases of joint owners or joint contractors and partners, in all of which cases there exists a joint financial or proprietary interest (see *Morgan and Another* v *Salisbury Municipality* 1935 AD 167; *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (AD)). In my view the defendant's contention is not without substance and he has put forward a triable and arguable issue which is sufficient ground for the refusal of an application for summary judgment.'

[21] The defendant's second special plea is also linked to the defendant's main plea insofar as the involvement of Mamokebe is concerned. The defendant denies that it had the duty to deliver 15 000 tons of coal to the plaintiff and alleges a further oral agreement whereby the parties agreed over time that Mamokebe would deliver coal to the plaintiff equivalent to 4 140 tons.

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[1] *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 657; *Henri Viljoen (Pty) Ltd v Awerbuch Bros* 1953 (2) SA 151 (O) at 168 - 170.

[2] *Shingadia v Shingadia* 1966 (3) SA 24 (R) at 26D-F.

[22] The defendant further pleaded that that due to operational disturbances at the mine, it had committed to undertaking mining construction work for the plaintiff at an alternative location, specifically the Foloyi Mine. The understanding was that the cost of these services would be offset against any existing financial obligations.

[23] According to the oral agreement that the defendant places reliance, the parties agreed that the defendant will provide a payment reconciliation at the end of 2024 with respect to the repayment. The 4 140 tons that Mamokebe must deliver to the plaintiff were invoiced at R690. per ton (VAT inclusive) under the parties' agreement. This is notwithstanding an extra payment of R300 000 made by the defendant to the plaintiff on 2 May 2024.

[24] A reconciliation dated 2 May 2024 is attached to the defendant's plea and makes reference to several payments in relation to work done in January 2024 and compensation by the task force. The reconciliation takes into account payment of R300 000 and a total balance of R913 866.97.[3]

[25] In resisting summary judgment, the defendant, contends that the affidavit in support of the application for summary judgment does not comply with regulation 2*(a)* of the Regulations Governing the Administration of an Oath or Affirmation ('the Regulations').[4] The plaintiff has correctly pointed out that the Regulations do not contain a regulation 2*(a)*, and that there is no requirement that the Commissioner of Oaths has to initial each page of an affidavit. Regulation 4(2)*(a)* mandates that the Commissioner of Oaths to sign the declaration and print his full name and business address below his signature.

[26] The absence of a requirement for the Commissioner of Oaths to initial every page of a sworn statement has been affirmed in various decisions. The defendant's

[3] Defendant's plea, page 42, annexure "B".
[4] Regulations Governing the Administration of an Oath or Affirmation GN R1258 in *GG* 3619 of 21 July 1972.

counsel did not persist with this point during argument.[5] I take the view that such a technical point must be rejected.[6]

[27] It is clear, that apart from the various special pleas, the defendant's main opposition to summary judgment is that it has a valid *bona fide* defence because it already refunded or settled the plaintiff's outstanding monies. The defendant alleges that outstanding monies were sufficiently defrayed and that its affidavit and plea show there is a genuine factual dispute between the parties.

[28] The defendant alleges that the amounts claimed by the plaintiff are incorrect and that confirmation of performance in accordance with the oral agreement remains a triable issue.

[29] In assessing the various defences raised and whether the defendant's assertions amount to unsubstantiated claims it is necessary to examine the plea in conjunction with the opposing affidavit and take into account any discrepancies between these two documents. Insofar as the oral agreement contended for by the plaintiff is concerned, there is no dispute that the plaintiff effected three payments of R3 450 000 to the defendant on 30 June 2023, 31 July 2023, and 7 August 2023.

[30] The defendant has further acknowledged the outstanding quantities of coal in the amounts of 12 900 tons and undertook to repay the plaintiff in monthly instalments of R1 500 000. The acknowledgement which is attached to the plaintiff particulars of claim also records that the defendant attached *a revised payment reconciliation for the plaintiff's approval which had taken the 4 140 tons into account as per the latest instruction from the Task Force,* and that the defendant awaited further advice.

[31] In a letter of demand from the plaintiff dated 11 July 2024, the plaintiff acknowledged the existence of a further agreement and recorded as follows:

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[5] *Minister of Safety and Security and Others v Mohamed* [2010] 4 All SA 538 (WCC) para 26. See also *Q4 Fuel (Pty) Ltd v Ellisras Brandstof en Olieverspreiders (Pty) Ltd and Others* [2021] ZA LMPPHC 81 para 20, and *O'Connor v Lexisnexis (Pty) Ltd* (2024) 45 ILJ 1287 (LC) paras 60-61.

[6] *Lohrman v Vaal Ontwikkelingsmaatskappy (Edms) Bpk* 1979 (3) SA 391 (T) at 399A-B.

'At the time when the Agreement was terminated, RT Coal had failed to deliver approximately 12 348 tonnes of Product to our client (which Product was valued at a total sum of R8 519 837.00 (eight million five hundred and nineteen thousand, eight hundred and thirty-seven Rand) to our client despite being paid for same. The parties then agreed that RT Coal would render services to our client to reduce the debt which RT Coal owed to it. We are instructed that for various reasons, this arrangement only persisted for three months, and that the debt was only reduced by R 909 150.00 (nine hundred and nine thousand one hundred and fifty Rand) during this time.'[7]

[32] The defendant has expressly maintained in its plea that the amount of R2 250 000, should have been paid by the plaintiff to the defendant, and that the plaintiff has not addressed or disputed this claim and that such is an issue that needs to be decided by a trial court.

[33] These averments by the defendant constitute material facts relied upon by the defendant, and are in harmony with the affidavit resisting summary judgment where the defendant alleges that 'the applicant ought to have paid to the respondent a sum in the amount of R2 250 000'.[8] In resisting summary judgment, the defendant also alleges that it has fulfilled its obligations, by performing and delivering in accordance with the oral agreement as specified in paragraph 8.2 of the its Plea.

[34] I have also taken into account the plaintiff's claim that in January 2024, the defendant acknowledged the outstanding quantities of coal of 12 900 tons and that it undertook to repay the plaintiff in monthly instalments of R1 500 000. Mr *Prinsloo*, for the plaintiff, contended that the defendant failed to place this document in dispute and that it is deemed to be admitted. Whilst I accept that the defendant had simply noted the allegations pertaining to its acknowledgment and undertakings, the defendant's failure to expressly deny the allegations is not dispositive of that issue.

[7] Pleadings, page 19, annexure "POC7".
[8] *Tumileng Trading CC V National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC) para 25.

[35] Mr *Prinsloo* referred the court to the decision in *NPGS Protection and Security Services CC and Another v Firstrand Bank Limited*[9] where the court outlined the applicable principles as follows:

'Rule 32(3) of the uniform rules requires an opposing affidavit to disclose fully the nature and grounds of the defence and the material facts relied upon therefor. To stave off summary judgment, a defendant cannot content him- or herself with bald denials, for example, that it is not clear how the amount claimed was made up. Something more is required. *If a defendant disputes the amount claimed, he or she should say so and set out a factual basis for such denial. This could be done by giving examples of payments made by them which have not been credited to their account*.

[13] As counsel for the respondent correctly submitted in his heads of argument, the appellants did not deny the respondent's allegation that moneys were lent and advanced to NPGS in terms of the credit facility, or that the credit facility was increased at the special instance and request of NPGS. Furthermore, the appellants have not complained that NPGS never received statements showing the balance of the moneys owed. It is also instructive that the appellants do not assert that any repayment of these moneys lent and advanced has been made. Their silence leads ineluctably to the conclusion that they were unable to meet the respondent's allegations. In my view the defences raised by the appellants fall within those characterised as "sham defences" by this court in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) ([2009] ZASCA 23) paras 31 and 33. There is no merit in any of them.

[14] Indeed, the court would be remiss in its duties if such defences, clearly devoid of any bona fides, stand in the way of plaintiffs who are entitled to relief. The ever increasing perception that bald averments and sketchy propositions are sufficient to stave off summary judgment is misplaced and not supported by the trite general principles developed over many decades by our courts. See, for example, the well-known judgment of this court in *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) where the proper approach to applications for summary judgments is stated.' (Footnotes omitted, my emphasis.)

[36] The document sought to be relied upon by the plaintiff, whilst referred to by the plaintiff as an acknowledgment of debt, must be read in context of documents making reference to the *revised payment reconciliation* and *instructions from the task force.* I

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[9] *NPGS Protection & Security Services CC and Another v FirstRand Bank Ltd* [2019] ZASCA 94; 2020 (1) SA 494 (SCA) .

am of the view that the document does not meet the requirements of a liquid document in that it does not stipulate the exact amount of the debt, the exact payment terms and or acknowledgment for payment of the amount of R8 519 837. The defendant's opposition in fact discloses that there was an additional oral agreement. The circumstances of such oral agreement may amount to a set-off and may very well establish that the amount of R8 519 837 is inaccurate.

[37] It cannot be said that the defendant has tendered a bald denial. It has alleged a further oral agreement, which appears to be supported by the supporting documentation by both parties, and which brings into question the correct amount that is owed to the plaintiff. Whilst the plaintiff has referred to these amounts as arbitrary, such a determination and the computation of such alleged arbitrary amounts are an issue which should be ventilated at trial.

[38] The Uniform Rules of Court clearly explain under what circumstances a plaintiff may claim summary judgment. The applicable rule is rule 32(1), and it reads as follows:

'The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only —

*(a)* on a liquid document;

*(b)* for a liquidated amount in money;

*(c)* for delivery of specified movable property; or

*(d)* for ejectment;

together with any claim for interest and costs.'

[39] It is clear from Uniform rule 32(1) that only claims fitting one of the four prescribed categories are suitable for summary judgment; claims that cannot be so classified must go to trial. The amount of R8 519 837. has been placed in dispute as a consequence of another oral agreement alleged by the defendant. It cannot be said that the defendant's reliance on that oral agreement is not *bona fide*. I am also of the view that the defendant is entitled to place in dispute that it is the incorrect party before court. The defendants second special plea is thus an issue which the trial court would be in a better position to determine as such issue remains a factual dispute.

[40] I am of the view that the payment reconciliation relied upon by the defendant and attached to the plea records '*Foloyi work done*' and several other amounts, including a payment of R300 000 should be ventilated at trial. The defendant however acknowledges at the very least that it is liable for the amount of R913 866.97. It provides no information that this amount has been paid and does not seek to tender any sustainable or *bona fide* defence that it does not owe this amount.

[41] In *Standard Bank of South Africa Ltd v Friedman*,[10] the court summed up the position as follows:

'I think it is abundantly clear what Rule 32(3)(*b*) requires of a defendant who deposes to an affidavit to resist summary judgment. I also think that the time has come for courts to be slower in coming to the rescue of defendants who have not properly complied with the provisions of Rule 32(3)(*b*). In my view it will restore the purpose of the procedure which in recent years has lost ground due to the reluctance of courts to shut a defendant out without a proper ventilation of the dispute, even where the defendant has not made out a proper case on the papers to avoid summary judgment. To my mind, if a defendant is so shut out, it cannot blame the court or anyone else; it must shoulder the blame alone because no court will grant summary judgment where a defendant has properly discharged the onus upon it in terms of the applicable rule.

If courts do not adopt this approach the efficacy of this procedure will be at risk, and the time may soon come to enquire whether the continued existence of such a procedure is justified among the Rules of court.

A bona fide defence is disclosed if the defendant swears to a defence, valid in law, in a manner that is not inherently or seriously unconvincing (*Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 228B–C).

If the defence is averred in a manner which appears in all the circumstances to be needlessly bald, vague or sketchy, that will constitute material for the court to consider in relation to the requirement of bona fides (*Breitenbach v Fiat*, *supra*, at 228E–F).'

[42] Rule 32(6)(b)(ii) provides that:

'If on the hearing of an application made under this rule it appears —

*(a)* …

*(b)* that the defendant is entitled to defend as to part of the claim,

the court shall —

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[10] *Standard Bank of South Africa Ltd v Friedman* [1999] 1 All SA 142 (C) at 148.

(i) …

(ii) give leave to defend to the defendant as to part of the claim and enter judgment against such defendant as to the balance of the claim, unless such balance has been paid to the plaintiff'.

[43] The determination of summary judgment in circumstances where a *bona fide* defence has been disclosed to part of the claim and where the defendant had not been able to disclose a defence to part of the claim has been also pronounced upon in *Maharaj v Barclays National Bank Ltd*,[11] where Corbett JA said*:*

'If on the hearing of the application it appears that the defendant is entitled to defend as to part of the claim, then, in terms of Rule 32 (6), the Court is bound to give him leave to defend as to that part and to enter judgment against him for the balance of the claim, unless he has paid such balance into Court.

Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the Court by affidavit that he has a *bona fide* defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. 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.'

[44] The defendant clearly had no defence to this claim, let alone a *bona fide* one. It was clear to the defendant from a conspectus of the affidavit in support of summary

[11] *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 425H–426E.

judgment that the plaintiff alleged that 'According to Annexure 'B', and even after deducting the arbitrary amounts provided for in the said document from amounts owing to the Plaintiff, the Defendant is left with an indebtedness to the Plaintiff in the amount of R 913 866.97…'. This allegation was met with a bald denial and cannot be *bona fide* in circumstances where the document was attached by the defendant and was based on the defendant's own reconciliation. Had there actually been any *bona fide* defence available to the defendant in relation to the defendant's indebtedness for the amount of R 913 866.97 , such a defence should have been set out in the affidavit resisting summary judgment. Liability to pay R913 866.97 is not challenged and is in fact an amount which the defendant has reconciled and acknowledged. The defendant's inability to tender a defence constitutes a clear case for the plaintiff's claim for summary judgment.[12]

[45] I am satisfied that there is no reason to deviate from the principle that costs should follow the result in the circumstances of this matter. The plaintiff was entitled to proceed with summary judgment upon receipt of the defendant's reconciliation, which recorded its indebtedness for the amount of R913 866.97. The plaintiff has succeeded in establishing that the defendant has not availed itself of a *bona fide* defence for the amount of R913 866.97, which it has reconciled itself to being owed to the plaintiff.

**Order:**

[46] In the result, I make the following order:

1. The defendant's first special plea is dismissed.
2. The defendant is ordered to pay the sum of R913 866.97 to the plaintiff;
3. The defendant is ordered to pay interest on the aforesaid amount at the rate of 11.5%, calculated from the date of 1 December 2023;
4. The defendant is ordered to pay the costs of the summary judgment application;
5. The defendant is granted leave to defend the balance of the plaintiffs claim in the action with costs to be in the cause.

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[12] *JNO G Teale & Sons (Pty) Ltd v Vrystaatse Plantediens (Pty) Ltd* 1968 (4) SA 371 (O) at 374H.

[redacted]

D Pillay AJ

Acting Judge of the High Court of South Africa

Heard on: 9 October 2025

Delivered on: 12 December 2025

Appearances

For the applicant: Mr D Prinsloo

Instructed by: Beech Veltman Incorporated

For the respondent: Ms T Nqcobo

Instructed by: Ndlovu AZ Attorneys