

REPUBLIC OF SOUTH AFRICA



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

Case No: 40806/2018

Reportable: No
Of interest to other Judges: No
Revised: Yes
Date: 21 November 2025


SIGNATURE

In the matter between:

NTANGA NKUHLU INCORPORATED

Plaintiff

and

INDEPENDENT DEVELOPMENT TRUST

1st Defendant

TRUSTEES FOR THE TIME BEING OF THE INDEPENDENT
DEVELOPMENT TRUST

2nd Defendant

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

MOOKI J

- 1 The plaintiff seeks leave to appeal, following the court's dismissal of the plaintiff's claim in trial proceedings.
- 2 These are the grounds of appeal:
 - 2.1 The court considered issues that were not pleaded.
 - 2.2 The court ought to have found for the plaintiff, once the plaintiff proved the cession.
 - 2.3 The Court inferred an amendment that was not sought.
 - 2.4 The defendant pleaded agreements that were not disclosed.
 - 2.5 The court ought to have rejected Ms Barnes' evidence that the agreement between the parties would have set-out the basis for payment.
 - 2.6 The defendant ought to have been found, at a minimum, liable for invoice 2456.
 - 2.7 The court erred in its finding that Ms Barnes and her staff were diligent in searching for documents to support the making of payments.
- 3 It was submitted that the defendant's entire plea was premised on the plaintiff having breached PROCSA, and that the defendant did not plead that the claim was not ripe. Reference was made to the decision in Hippo Quarries¹ that the burden shifted to the defendant once the plaintiff had

¹ Hippo Quarries (Transvaal) (Pty) Ltd. v Eardley 1992 (1) SA 867 (AD)

established a cession. The ultimate submission on this point was that the Court ought to have given judgement in favour of the plaintiff once the cession was proven and that there was no need to prove the ripeness of the claim.

- 4 The ripeness of the claim did not bear on whether a cession had been established. The decision in Hippo Quarries does not apply. The court accepted that a cession had been established. There was no evidence that the defendant was obliged to pay only on a showing of the existence of the cession. The plaintiff joined issue, in the trial, that certain information had to have been presented before payment could be made. That is why the plaintiff sought to lead evidence that Mr Mboya supplied the necessary documents. The plaintiff would not have advanced such evidence if all that was required was for the plaintiff to demonstrate the existence of a cession.
- 5 I am not persuaded that the court inferred an amendment as contended for. The issue of whether payment could be paid was a live one in the trial. The Court had to make a finding on the issue. Such a finding cannot be construed as the court having inferred an amendment to pleadings. This was an instance of the court making a finding based on evidence during proceedings.
- 6 The defendant's failure to disclose the agreements, together with the court having accepted the existence of the cession, do not result in the plaintiff having shown that nothing more was required for the defendant to pay on the invoices. As indicated above, whether supporting documentation had been made available was a key point of dispute during the trial.

- 7 The plaintiff joined issue that it was a requirement that certain information be available before payment could be made. This is illustrated by the plaintiff's evidence that Mr Mboya had sent supporting documents, with the result that the defendant became obliged to pay amounts reflected in the invoices. The plaintiff tested Ms Barnes' evidence, seeking to demonstrate that the defendant had been given supporting documentation. The plaintiff may not, in this application, seek to advance a different case, namely that Ms Barnes' evidence on the need for information before payment could be made was irrelevant. The plaintiff sought to rely on Mr Mboya's e-mail that supporting documentation had been made available. Ms Barnes gave evidence to the contrary.
- 8 It is submitted on behalf of the plaintiff that the court ought to have accepted the email of 19 February 2020, in which Mr Mboya wrote to Ms Barnes concerning documents. The plaintiff submitted that Ms Barnes did not communicate with Ms Mohlaudi, contrary to the recordal in Mr Mboya's e-mail. Mr Mboya, in the e-mail, recorded that he had couriered all documents to the defendant and that Ms Mohlaudi would visit schools for an inspection. The defendant did not admit the e-mail by Mr Mboya as setting out statements of fact. The plaintiff did not call Mr Mboya to give evidence. Ms Barnes gave evidence on what she did in seeking to obtain supporting documents. There was no basis to disregard her evidence on this score.
- 9 The defendant paid Mr Mboya for invoice 2456. This was after the plaintiff issued summons and after the defendant had been notified of the existence

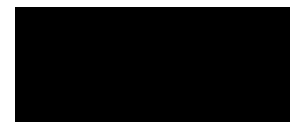
of the cession. Mr Abrahams submitted that Mr Mboya essentially committed fraud in receiving the payment whilst being aware of the cession. The plaintiff, in essence, sought the court to use its authority, in the present proceedings, to recover funds which the plaintiff admits were misappropriated by Mr Mboya. That would be an inappropriate use of the authority of the court. The plaintiff ought to institute such measures as provided for in the law to recover the amount.

10 I am not persuaded that the court should grant leave to appeal. The plaintiff has not shown that the plaintiff has reasonable prospects of success. Mr Abrahams submitted that leave be granted also on account of section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013 (the Act). He submitted that the application raises issues of sufficient public interest given the purpose of pleadings and the requirement that courts adjudicate pleaded disputes. I am similarly not persuaded that this application establishes a compelling reason, as required in section 17(1)(a)(ii) of the Act, to grant leave to appeal. I refer to the reasons stated in this judgement.

11 I make the following order:

(1) The application is dismissed.

(2) The plaintiff is ordered to pay costs.



O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the plaintiff:

S Abrahams

Instructed by:

Mr Ntanga Nkuhlu Inc.

Counsel for the defendant:

N E Memela

Instructed by:

Maphoso Mokoena Inc.

Date heard:

10 October 2025

Date of judgement:

21 November 2025