REPUBLIC OF SOUTH AFRICA

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

Case Number: 2024-136216

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

10/03/26 [redacted]
DATE SIGNATURE

In the matter between:

CENTENARIO BODY CORPORATE Plaintiff

and

THANDEKA MLOTYA Defendant

JUDGMENT

FISHER J

[1] The is an application for summary judgment based on an acknowledgement of debt (AOD) in the amount of R17 981.86.

[2] I granted leave to defend, costs in the cause.

[3] The plaintiff's attorneys SCHÜLER HEERSCHOP PIENAAR have sought my reasons for granting leave to defend. The reasons follow.

[4] This firm of attorneys had two matters on my opposed roll and it appears that they set matters down regularly on the summary judgment rolls of this court.

[5] I have marked this judgment "*of interest to other judges*" for this reason.

[6] The plaintiff is a body corporate and the defendant is a homeowner in the body corporate scheme. The defendant, as such, is liable for levies charged as part of a running account.

[7] The defendant pleads that he has made payment under the AOD. He provides details of his payments.

[8] It seems that these payments are not disputed. However, the argument raised is that the plaintiff has appropriated these payments for other items of indebtedness which have accrued since the signing of the AOD.

[9] The AOD is signed in the context of a running account and apparently in circumstances where the defendant has indicated in the context of a "debt management solution" offered to him, that he wishes to enter into an arrangement that will allow him to meet any accrued debt by way of instalments over a set period.

[10] The defendant alleges that, on reflection on the charges on the account he sees that through this debt management solution he is made subject to numerous illegitimate charges on this account, chief amongst which are the plaintiff's attorneys own substantial charges. There are also, prima facie, illegitimate water charges made to the account by the plaintiff which, the defendant argues have no foundation in law. This, to my mind, raises a triable issue.

[11] A further triable issue which arises is whether it is competent for the plaintiff body corporate to raise unlawful charges against homeowners as part of the payment scheme to which they are subjected on becoming an owner in the applicable body corporate. And, for that matter, whether the scheme would be capable of such a construction.

[12] Arguably, the seeking of payment of fees which the body corporate would, in the normal course, not lawfully be able to charge were it not for the imposition of an

AOD would be contrary to the nature of a body corporate schemes and, at very least, questionable on the principles considered in *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* (CCT109/19) [2020] ZACC 13; 2020 (5) SA 247 (CC); 2020 (9) BCLR 1098 (CC) (17 June 2020)

[13] The relatively small amount claimed in the context of High Court costs of process is cause for concern. Prima facie, I accept that the claiming of an amount of little more than R17 000 in the High Court is uneconomical when reference is had to costs.

[14] The plaintiff's attorneys appear to be in control of the debt collection process. Thus, it is arguable that the plaintiff's function, which has a statutory function in relation to the proper and fair management of the complex, has been abdicated to a process designed by the attorneys and which extends to the litigation phase of the recovery.

[15] It seems that from the moment of hand-over of the debt the communications are with the attorneys rather than the trustees of the plaintiff. The AOD seems standard to the process and the plaintiff's domicilium under the agreement is care of the attorneys. It should be noted that this is before any litigation begins.

[16] Thus, it may be that the default in relation to payment of levies is administered by the attorneys and not directly by the plaintiff. This may include the determination and allocation of costs which flow to the attorneys. Whether the plaintiff gives instructions to embark on litigation by way of resolution is not clear. There is no indication that this is the case. There is also no indication of how the proceeds of litigation are managed.

[17] It seems that the approach adopted by the plaintiff is this. The body corporate assisted by the attorneys draws up acknowledgments of debt when owners fall into arrear with their levies; these acknowledgments cover the attorney's own charges on the scale as between the plaintiff and the attorneys; the High Court summary judgment processes are used to collect on these charges; there is reasonable expectation that, given that the indebtedness is reduced to an acknowledgment of debt there will be no examination of the underlying charges and it will be difficult for the defendant to raise a bona fide defence.

[18] In the normal procedural course, this is likely to result in a summary judgment including a costs order which pays the attorneys.

[19] There are provisions made in the memorandum of incorporation of the plaintiff and the AOD for attorney client costs. This costs order brings the attorneys yet further costs, including counsel's costs.

[20] If the attorneys are motivated by the collection process, including the institution of litigation which generates payment of their fees, as determined by themselves, on the basis that these fees are recovered directly from the defendant owner and not their client there may be conflicts of interest which have a bearing on the individual homeowners' rights with reference to their participation in the plaintiff.

[21] In this case, these attorneys' costs eclipse the claim of R17 981.86 by at least five-fold – probably more.

[22] The homeowner who does not oppose the summary judgment is, thus, potentially caught in costs spiral under circumstances where he is under financial pressure to begin with. This could, ultimately, result in his home being attached or his insolvency at the hands of the plaintiff. These results are seen in the unopposed courts regularly.

[23] The use of the debt management system relies on the summary judgment procedure. If the matter is defended the system fails because the homeowner is heard in due course on the illegitimate charges and in relation to the prudence of bringing a claim for under R20 000 in the High Court.

[24] The scale on which this management system is offered to the industry at large is not clear. As I have said, there were two collection matters on my roll handled by body corporates by these same attorneys.

[25] Arguably, the approach taken is an abuse of the High Court process, but this need not be determined at summary judgment stage.

[redacted]

FISHER J
JUDGE OF THE HIGH COURT
JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Caselines. The date for hand-down is deemed to be 06 March 2026.

Date of Hearing: **04 March 2026**

Date of Judgment: **06 March 2026**

Appearances:

Counsel for the Plaintiff: **Adv T Mirtle**

Attorneys for the Plaintiff: **SCHÜLER HEERSCHOP PIENAAR**

Attorney for the defendant : **Mr K M Mabale of KM MABALE & ASS**