**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO:11124/2018**

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

[redacted]

DATE 24/02/2026 LENYAI J

**CHACHAOKE MANAGEMENT PROJECTS CC** **Plaintiff**

And

**MAXIMUM PROFIT RECOVERY (PTY) LTD** **Defendant**

*Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 24 February 2026.*

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**JUDGMENT**

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**LENYAI J**

[1] This is a claim wherein the plaintiff claims damages from the defendant based on a breach of an agency agreement.

[2] This matter was designated as a commercial court matter. There were three witnesses in this matter one for the plaintiff and two for the defendant. In terms of the Commercial Court Practice Directive all the witnesses had provided their full witness statements which constitutes the evidence in chief of the respective witnesses.

[3] The parties were not able to agree on the issues that require determination by the court, and they filed their lists of triable issues separately.

[4] The plaintiff's list of triable issues are the following:

4.1 Whether the plaintiff is entitled to payment in the sum of R 17 143 628.98 as claimed in its particulars of claim, and which amount arises from the plaintiff's entitlement in terms of the Agency Agreement entered into between the parties, to 20% of all payments received from:

4.1.1 the Sekhukhune District Municipality in respect of a VAT review and compliance contract awarded to the defendant by the municipality by way of a letter of appointment as service provider attached as annexure "CMP2" to the particulars of claim, and which contract was, in terms of the Agency Agreement, facilitated or brought on by the plaintiff's efforts;

4.1.2 the Ephraim Mogale Local Municipality in respect of VAT review services rendered by the defendant to the municipality in accordance with a letter of appointment which is attached as annexure "CMP3" to the particulars of claim, and which appointment was, in terms of the Agency Agreement, facilitated or brought on by the plaintiff's efforts.

4.2 Whether the plaintiff is, in view of the defendant's counterclaim, indebted to the defendant in the amount of R257 002.02.

4.3 Whether the plaintiff had repaid the amount claimed by the defendant in its counterclaim and whether such repayment constitute an amount of R299 203, R42 199.98 of which constitute an overpayment by which the defendant has been unjustly enriched and therefore constitutes an amount that the plaintiff is entitled to.

[5] The defendant's list of triable issues are the following:

5.1 Whether the agency agreement concluded between the parties included an annexure "A", and whether in the absence of annexure "A" (on which approved clients were to be identifies), the plaintiff had a valid mandate;

5.2 Whether the plaintiff was the effective cause of the conclusion of the agreement between the defendant and the Sekhukhune District Municipality;

5.3 Whether there was compliance with clauses 10.1, 10.3, 10.3 and/or 10.5 of the agency agreement in respect of both the Sekhukhune District Municipality and the Ephraim Mogale Local Municipality;

5.4 Whether the plaintiff's claim to commission was compromised when it accepted payment equal to 5% of the commission in respect of the income generated by the contract concluded between the defendant and the Sekhukhune District Municipality;

5.5 Whether the plaintiff is liable to make payment to the defendant in terms of the acknowledgement of debt agreement concluded on 7 April 2014.

[6] The plaintiff's witness statement is summarised as follows:

6.1 Mr Sesing Victor Sedibane is the witness for the plaintiff. He stated that he is the sole member and owner of the plaintiff. On 17 January 2013 at Pretoria at the defendant's offices, he entered into a written agency agreement with Mr Bernard Saayman who was representing the defendant in his capacity as the Chief Operating Officer. A copy of the agreement is attached to the particulars of claim and is marked annexure "CMP1".

6.2 In terms of paragraph 3.2 of the agency agreement, the defendant reserved the right and did in fact conclude similar written agency agreements with a number of other agents. In terms of paragraph 3.2, each agency agreement was exclusive in that it related to the agreement between the agent and the defendant only. In other words, each agency agreement did not provide or cater for co-agents within the same agency agreement. The agency agreement signed between the plaintiff and the defendant did not bind or relate to any other party who was not mentioned in the agreement. He further stated that he had never met any of the defendant's other agents or had no dealings with them, nor did he sign any document or agreement with any of the defendant's agents involving the plaintiff's agency agreement with the defendant.

6.3 Some of the terms of the agency agreement between the plaintiff and the defendant were:

6.3.1 the plaintiff had to use its best endeavours to secure service agreements between the defendant and clients, more specifically municipalities, in terms of which the defendant would render services to the clients for a fee;

6.3.2 to the extent that the plaintiff was able to secure service contracts on behalf of the defendant, i.e where the plaintiff was, through its endeavours, the effective cause of the conclusion of any service contract between the defendant and any municipality, the plaintiff would, in terms of clause 10.1 of the agency agreement, become entitled to a commission equal to 20% of the VAT exclusive fee earned by the defendant from rendering VAT review services to the municipality;

6.3.3 in terms of the agency agreement, the defendant was required to pay the plaintiff the commission at the end of the month in which the defendant received payment from the municipality for its VAT review services;

6.3.4 in terms of paragraph 9.1 of the agency agreement, a restraint of trade was placed upon the plaintiff for a period of 24 months after termination of the agency agreement in that the plaintiff was restrained from being associated with, canvassing or accepting an instruction from any other company or business within South Africa, Namibia and Botswana for the same kind of services that the plaintiff was rendering to the defendant as an agent under the agency agreement. However, the defendant did not offer to compensate the plaintiff for the two year restraint of trade placed on the plaintiff. This meant that the defendant prohibited the plaintiff from earning an income from its normal trade which involved securing profitable service contracts for the defendant from municipalities. In his view, denying or prohibiting any person – company or individual – the right to earn a living is in breach of the Constitution of the Republic of South Africa;

6.3.5 Paragraph 3.4 of the agency agreement stipulates that *"the agent shall only canvas business from clients or potential clients identified by the Company [the Defendant] and communicated to the Agent [Plaintiff] in writing as specified in an Annexure "A"'.* Mr Sedibane stated that the defendant provided him with an annexure "A" which listed Sekhukhune District Municipality as the client identified by the defendant for the plaintiff to canvass business from. The initials of Mr Barnard Saayman, the defendant's Chief Operating Officer, appears at the bottom of annexure "A". He further stated that his understanding is that his attorneys have since disclosed annexure "A" to the defendant's attorneys through what he was told was a discovery process;

6.3.6 Mr Sedibane stated that in accordance with paragraphs. 3.1 and 3.3 of the agency agreement and using his best endeavours, he canvassed and obtained the Sekhukhune District Municipality on behalf of the defendant. His endeavours resulted in a letter of appointment dated 24 February 2014 signed by the municipal manager. The letter of appointment was handed to him personally and he in turn handed it over to the defendant's office. A copy of the said letter was attached to the particulars of claim;

6.3.7 During the discovery process it emerged that the Sekhukhune District Municipality had made a number of payments to the defendant for VAT review and compliance services the defendant had rendered to the municipality. The payments were reflected in a document titled " Maximum Profit Recovery (Pty) Ltd: Customer QuickReport" which was also attached to the particulars of claim. The document provides a breakdown of the amounts paid to the defendant and the dates on which the payments were made. Since the plaintiff was the effective cause of the defendant rendering VAT review and compliance services to the Sekhukhune District Municipality, the plaintiff was, in terms of paragraph 10.1 of the agency agreement, entitled to 20% of the VAT exclusive payments received by the defendant from the municipality. Such commission was payable to the plaintiff at the end of the month in which the defendant received the payments from the municipality.

6.3.8 According to the Customer QuickReport, the defendant received the following amounts from the Sekhukhune District Municipality:

- 01/10/2014 R 37 860.76
- 02/12/2014 R21 059 301.95
- 17/01/2015 R 8 939 415.01
- 03/03/2016 R 216 815.11
- 12/08/2016 R 1 527 059.82

6.3.9 Under the agency agreement the plaintiff is entitled to 20% commission in respect of each individual payment received and the total commission payable is R13 920 611.94. The defendant made the following commission payments to the plaintiff (considered an advance payment by the defendant) :

- 07/04/2014 R 45 600.00
- 12/12/2014 R 309 772.58
- 26/01/2015 R 271 863.22
- 26/05/2015 R 640 033.28

Total commission paid R1 267 269.08

6.3.10 There is therefore a shortfall of R12 653 342.86 in respect of the amount of commission payable to the plaintiff by the defendant for the 2014 and 2015 financial year which relate to the VAT review and compliance services rendered by the defendant to the Sekhukhune District Municipality. The defendant is accordingly indebted to the plaintiff in respect of the aforesaid amount, which is due and payable to the plaintiff.

6.3.11 Mr Sedibane stated that, until the Customer QuickReport emerged through the discovery process, he had made repeated attempts to obtain information from the defendant, on what amounts precisely it had received from the Sekhukhune District Municipality under the contract of which the plaintiff was the effective cause. The defendant refused to provide such information, making it impossible for him to determine the defendant's true indebtedness to the plaintiff in so far as the commission payable is concerned.

6.3.12 Between 13 February 2020 and 13 February 2021, the defendant continued to invoice and receive payments from the Sekhukhune District Municipality for services rendered under the contract of which the plaintiff was the effective cause. These amounts are set out in the Customer QuickReport, which amounts included the following:

- 27/02/2020 R3 278 547.75
- 13/03/2020 R 755 629.66
- 20/06/2020 R3 268 657.75
- 30/06/2020 R 755 743.66
- 18/08/2020 R2 010 636.55
- 02/10/2020 R1 246 619.10
- 09/11/2020 R 938 062.68

- 13/12/2020 R1 946 256.76
- 19/12/2020 R1 610 831.15
- 21/01/2021 R1 767 214.81
- 13/02/2021 R2 285 896.16

Total payments received R19 864 096.03

6.3.13 Under the agency agreement the plaintiff is entitled to 20% of the above amounts received by the defendant from the Sekhukhune District Municipality. The amount of commission the plaintiff is entitled to is R3 972 819.20.

[7] The total unpaid commission due to the plaintiff from payments made to the defendant by the Sekhukhune District Municipality thus amounts to R17 893 431.14.

[8] Mr Sedibane further stated that he canvassed and obtained business from the Ephraim Mogale Local Municipality on behalf of the defendant. His endeavours resulted in a letter of appointment dated the 19 February 2014 for the defendant to provide VAT review services to the municipality. The said letter of appointment was emailed to Mr Bernard Saayman who was defendant's Chief Operating Officer at the time.

[9] The defendant earned and was paid a fee of R3 191 820.72 from rendering vat review services to the Ephraim Mogale Municipality. In terms of the agency agreement, the plaintiff was entitled to a commission of 20% of the aforesaid amount, such commission amounting to R634 368.14 plus VAT amounting to R89 370.98. The total commission amounts to R727 735.12 and the defendant

paid the plaintiff R210 268.21. The outstanding amount of commission is R517 466.91.

[10] Mr Sedibane stated that during the existence of the agency agreement, he had obtained advances from the defendant. To this end and to secure repayment of the advances, an acknowledgement of the debt was entered into and signed between the plaintiff and the defendant. The defendant sought to recover the amounts advanced to the plaintiff by way of bringing a counterclaim for payment of the amount of R257 003.02. The defendant's schedule of payments dated 15 January 2015 reflects payments made in discharge of this debt. These payments amount to an amount of R299 203.00 and were paid in four tranches by way of deductions made by the defendant from the commission payable to the plaintiff.

[11] Mr Sedibane stated that the total payments made by the plaintiff to the defendant in settlement the R257 003.02 amounts to R299 203.00. The plaintiff has overpaid the defendant by an amount of R42 199.98, and it is entitled to a return of the overpayment.

[12] During cross examination Mr Sedibeng testified that on the day the agency agreement was signed there was an annexure "A" which referred to both municipalities.

[13] It was pointed out to him that he had put an incorrect date on the agency agreement when he signed. He conceded that the correct date was 2013 and not 2014 as initially indicated by him. His explanation was that when he signed, he had forgotten that the year was 2013 and put the year as 2014 and he wrote the 3 over the 4 to correct the mistake. It was put to him that his explanation did

not make sense. Mr Sedibeng testified that he was not in the office when Mr Barnard Saayman signed on behalf of the defendant. He signed later on the same day and made a mistake in the year.

[14] Mr Sedibane was asked if he was aware that the annexure "A" has a lifespan of 2 months, and his answer was that he was not aware. The legal representative of the defendant read clause 3.4 of the agency agreement to him which stated that the lifespan of the agency agreement was 2 months, and he testified that he accepted the clause.

[15] It was put to Mr Sedibane that the witness for the defendant will testify that there would ordinarily be an annexure "A" prepared by the defendant and provided to the agent and sometimes there would be an update of the annexure "A". He was asked if that was his recollection. His response was no. He testified that as an agent you would get the annexure "A" and you would work on it. He stated that it is practically impossible to work and get a deal in 2 months. As and when they have monthly meetings, they would give a progress report to Mr Barnard Saayman. He further testified that he does not remember that the defendant asked to revise the annexure "A".

[16] It was further put to Mr Sedibane that Mr Lesipa will testify on behalf of the defendant that it was made very clear that the 2 months period applies and if after 2 months you have not concluded a contract your mandate lapses. His response was that he does not know Mr Lesipa.

[17] Mr Sedibane was questioned about the handwriting and the initials on the annexure "A" as well as the numbering F132. He responded that he does not know whose handwriting was on the annexure "A" however he conceded that the

handwriting of Sekhukhune is the same on the annexure "A" produced by him and that attached to the agency agreement of Mr Letsipa. He responded that he received the list of municipalities from the defendant, and he also did not know where the numbering comes from.

[18] Mr Sedibane was further questioned why, the annexure "A" was not attached to the summons in February 2018 when the action was instituted, and it only surfaced six years later during April 2024. His response was that it's been a few year ago and he does not remember all the attachments. He finally said he does not know why the annexure "A" was missing for six years.

[19] It was put to Mr Sedibane that the annexure "A" that was produced by him six years latter is a carbon copy of the one that was attached to Mr Letsipa's agency agreement. Mr Sedibane asked when that agreement was signed and the response from the legal representative for the defendant was that it was signed during March 2014 however the verbal agreement was during February 2014. Mr Sedibane insisted that a month earlier on the 26 February 2014, Sekhukhune municipality gave him the letter of appointment and the agency agreement with Mr Letsipa was only signed a month later. It was put to Mr Sedibane that Mr Letsipa will testify that the agreement between his company and the defendant was concluded on 5 February 2014.

[20] It was put to Mr Sedibane that the annexure "A" has a duration of two months and based on the contract the plaintiff does not have a claim. He did not agree with this statement and explained that in practice once you are given an annexure "A" you start to work and give monthly progress reports and you are given

time to canvass for a contract. He further stated that it has never been the case that a new annexure "A" is given after the expiry of two months.

[21] Mr Sedibane was asked why there was a service level agreement for Ephraim Mogale Municipality but for Sekhukhune District Municipality there was none. He testified that after he delivered the letter of appointment from the Sekhukhune District Municipality to the defendant, he was instructed not to contact the municipality.

[22] It was put to Mr Sedibane that Mr Letsipa will testify that he was the one who got the letter of appointment. The legal representative for the defendant directed the court to caselines reference F136 paragraph 10 of Mr Letsipa's witness statement, where Mr Letsipa indicated that after the defendant's appointment to perform VAT reviews services on behalf of the Sekhukhune District Municipality, he continued his engagements with the municipality's representatives, especially the Finance department and his meetings were with the Chief Financial Officer, Ms Melda Mokono. The court was also referred to F139 which is an email from Mr Letsipa to Mr Barnard Saayman dated 4 February 2014 which attached a list of municipalities assigned to him by the defendant and Sekhukhune District Municipality is included there. Mr Sedibane's response was that by the time Mr Letsipa was meeting with the officials of the municipality he was already barred from interacting with Sekhukhune District Municipality.

[23] Mr Sedibane was asked why he was barred. His response was that the defendant has a system to log into the client's systems. Once the defendant realised that there was so much work at Sekhukhune District Municipality, he was barred so that he must not benefit. He further testified that the signing of the agency

agreement between the defendant and Letsijo Investments (Pty) Ltd was concluded on the 28 March 2014 and as a result Mr Letsipa could not do any work before the contract was signed.

[24] Mr Sedibane further testified that Mr Barnard Saayman's letter to Mr Letsipa wherein he was reminding Mr Letsipa not to forget that the first meeting with Sekhukhune District Municipality was arranged by Mr Sedibane they should share the commission. Mr Sedibane testified that he requested his full commission. Mr Saayman promised to arrange a meeting to resolve this issue however the meeting never took place.

[25] It was put to Mr Sedibane that the invoices that the plaintiff prepared were calculated on 5% and the defendant's agent's payment receipt also indicated that the commission was calculated on 5%. Mr Sedibane testified that he was requested by the defendant to specifically issue invoices for specific amounts without the benefit of knowing how much the defendant had received from Sekhukhune District Municipality. On some of the invoices the 5% would be added by hand and he would attach his signature only to confirm that he had claimed what he was required to claim by the defendant. Mr Sedibane further testified that there should not be a deviation from the 20% commission without a written amendment.

[26] It was further put to Mr Sedibane that the plaintiff never had an annexure "A" issued to him, even if he had one, it had lapsed long before the letter of appointment was secured.

[27] Mr Sedibane was asked what else did he do beside arrange the first meeting with Sekhukhune. His response was that he canvassed for business for the

defendant and Mr Saayman insisted on attending the meeting with him. It was put to Mr Sedibane that there were no emails from him during the period January 2013 – 26 February 2014 to the defendant giving proper reports. His response was that he gave the original handwritten reports to the defendant and never kept copies of the originals as he never thought that one day they would be arguing in court. It was further put to him that he never put this fact in his witness statement.

[28] Mr Sedibane was questioned how he calculated his claim. He testified that it was after he realised that the Sekhukhune District Municipality paid the defendant more than he claimed from the defendant. When he received the Customer Quick Report from the defendants in discovery of documents, he realised that he was short changed.

[29] It was put to Mr Sedibane that he became aware of the Customer Quick Report dated 26 May 2015 and the plaintiff only instituted its claim during 2018. In that report it is indicated that all the plaintiff's previous invoices were for 5% of the amount received from Sekhukhune District Municipality. Any reasonable person would have proceeded to issue new invoices for the balance. His response was that he was trying to engage the defendant to correct the mistake and get the balance and upon realising that the defendant was not going to pay the difference, the plaintiff instituted the action. It was pointed out to Mr Sedibane that this version was not stated in his witness statement.

[30] It was put to Mr Sedibane that it will be argued that the plaintiff should have issued a new invoice, and it will further be argued that the plaintiff did not issue a statement before instituting its claim.

[31] Mr Sedibane confirmed that the Sekhukhune letter of appointment was for 1 year specifically from 1 March 2014 to 1 March 2015. He further testified that when the initial contract expires, the initiator has the right of first refusal to extend the contract. Post the expiry of the contract the defendant continued to work on the contract. It was put to him that this is the first time he brings this up.

[32] During re-examination Mr Sedibane testified that there was no requirement for progress reports in the agency agreement. He also stated that the agreement did not allow for co-agency. He further testified that his understanding of the agency agreement is that, if an agent is the effective cause of the contract and that contract comes to an end, then that same agent would be granted the first option to re-sign the same contract within two months.

[33] He reiterated that he was the one who obtained the letter of appointment and drove to Pretoria to deliver it to the defendant. He also stated that Letsijo Investments (Pty) Ltd's agency agreement was signed on 28 March 2014, a month after he had obtained the letter of appointment dated 26 February 2014.

[34] Mr Sedibane was asked by his legal representative how long does it take for any agent to obtain a letter of appointment from a potential client. His response was that it depends on the progress made and it varies from one institution to the other.

[35] Mr Sedibane's legal representative asked him about the 5% commission issue. His response was that the invoices of the plaintiff of 7 April 2014, 12 December 2014, 22 January 2015 26 and May 2015 did not indicate 5% commission, and the defendant paid those invoices and the agent payment invoices from the

defendant similarly did not indicate a 5% commission. It was only during May 2015 that the Agent Payment receipt from the defendant indicated the 5% commission for invoices no. 10209,10213, 10224 and 10268. He testified that, that was the first time he saw the 5% commission on a document from the defendant. He further testified that the first time the dispute of commission arose was in an email from the defendant dated the 7 August 2014.

[36] It was put to him that the contract period was from 1 March 2014 to 31 March 2015, and it was suggested by the defendant that he could not be paid on the 26 May 2015.His response was that he was paid as per an invoice dated the same day and the amount paid was R640 033.28.

[37] The court adjourned on the afternoon of 8 September 2025 and resumed on the morning of 10 September 2025.

[38] Mr Sedibane continued with his testimony in re-examination. He testified that he arranged the first meeting with Sekhukhune District Municipality. He stated that it took several visits from him to arrange this meeting and gave progress reports to the defendant about his endeavors to arrange the meeting. Mr Saayman told him that he will come to the meeting with him. This meeting took place during October 2013 and only during January 2014 was he allowed to see the Municipal Manager.

[39] Mr Sedibane's legal representative stated that, it was put to him that clause 3.1 of the Agency Agreement that annexure "A" has a lifespan of 2 months. His response was that in practice it does not work like that. He stated that he started working on the Sekhukhune contract from September 2013 and only got the letter of appointment in February 2014, 5 months later.

[40] It was put to Mr Sedibane that there were two versions of the annexure "A" pointed out to the court. The first version indicated Sekhukhune District Municipality and the second version indicated Sekhukhune District Municipality and Ephraim Mogale Municipality. His response was that as you are busy canvassing for work some municipalities would be added or withdrew from the annexure "A".

[41] It was put to Mr Sedibane that an email written by Mr Saayman dated 7 August 2014, made a proposal that the plaintiff and another agent should equally share the commission from the Sekhukhune contract. Should the two agents agree to this proposal, Mr Saayman would send a document to formalise the new commission arrangement. His response was that he never agreed to the proposal and he actually sent a letter dated 11 August 2014 rejecting the proposal. He further testified that his understanding of the agency agreement was that any amendment to the agreement must be reduced to writing and signed by all the parties.

[42] Mr Sedibane testified that when he prepared invoices, he would be told by the defendant the amount he should indicate on the invoice, and he assumed that that was the 20% commission. He confirmed that the agents commission paid was VAT exclusive. He further testified that he never received the document from the defendant indicating that the commission paid was for 5%.

[43] Mr Sedibane testified that he is entitled to receive commission for the periods of 2016, 2020 and 2021 because the defendants were still operating on the letter of appointment obtained by him as no new letter of appointment was obtained. The plaintiff closed its case.

[44] The defendant had two witnesses, Mr Letsipa and Mr Saayman. Mr Letsipa testified first.

[45] Mr Letsipa's witness statement is summarised as follows:

45.1 He is a director of Letsijo Investments (Pty) Ltd (Letsijo). The relationship between his company Letsijo and the defendant started during the later parts of 2013, when Letsijo acted as the defendant's agent in securing a VAT review contract with the Matjhabeng Local Municipality.

45.2 Not long after the contract with Matjhabeng Local Municipality was secured, he started negotiating with the defendant's Chief Operating Officer, Mr Barnard Saayman about the possibility of approaching other municipalities on behalf of the defendant. By late December 2013 to early January 2014, Mr Saayman assigned him a list of municipalities which included Sekhukhune District Municipality.

45.3 On 4 February 2014 he addressed an email to Mr Saayman and attached an Excel spreadsheet providing updates on the municipalities he was working on and the progress thereof. He also enquired about the status of the other municipalities for potential engagement. In the update report to Mr Saayman, he stated that based on his marketing efforts, the Sekhukhune District Municipality made a decision to appoint the defendant and that an appointment will be made. A copy of the email together with the excel spreadsheet were attached to the statement.

45.4 He confirmed that as part of his marketing he engaged in in-person meetings and presentations with both the Sekhukhune District Municipality's manager, Ms MF Mokoko, and its Chief Financial Officer, Ms

Melda Mokono prior to the email update of the 4 February 2014. He stated that Letsijo was the effective cause of the contractual relationship between the defendant and the Sekhukhune District Municipality.

45.5 He stated that after the appointment of the defendant to perform VAT review services on behalf of the Sekhukhune District Municipality, he continued his engagements with the representatives of the municipality, specifically the finance department and his meetings with Ms Mokono. He compiled meeting notes and action items, and a copy of these notes was shared with Ms Mokono at the subsequent meetings. He would also provide Mr Saayman with formal updates and progress reports dated 14 March 2014 and 23 April 2014 as well as meeting notes and actions from meetings with Ms Mokono dated 14 March 2014, 14 April 2014 and 26 June 2014.

45.6 Mr Letsipa stated that during August 2014, Mr Saayman informed him the plaintiff claimed an entitlement to receive commission related to the work performed on behalf of Sekhukhune District Municipality. He made it clear to Mr Saayman that he had no doubt about his marketing efforts and that Letsijo was the effective cause of the agreement. He further stated that Mr Saayman informed him that the plaintiff once facilitated a meeting for him at the Sekhukhune District Municipality and was therefore making a claim for its efforts in facilitating the meeting. Mr Saayman also indicated that he would prefer an amicable solution and asked him to consider a proposal that he would send by email.

45.7 Mr Letsipa stated that he received the defendant's emailed proposal dated 7 August 2014 which reads as follows:

> *"Sekhukhune DC refers. Please note the following:*
>
> *It is clear that both of you have interest in this client. MaxProf's Company policy is that a maximum commission of 20% per client is paid towards commission to any agent. Therefore, my proposal is that you share in the commission, i.e. 10% each of the MaxProf invoice amount. Should you not agree to this proposal, the matter will unfortunately have to be referred to our attorneys for their assistance.*
>
> *Should you agree with the proposal, I will send you the required document to confirm the new commission arrangement.*
>
> *Due to the current dispute regarding the commission structure, I respectfully request that you do not interact with the client on individual basis until such time as the matter has been resolved.*
>
> *We await your urgent response in this regard."*

45. 8 Mr Letsipa stated that he rejected the proposal as he was of the view that there was no genuine dispute. In the months of August and September 2014, he engaged with Mr Saayman on the commission proposal and managed to settle at a commission split that Letsijo would receive 15% whilst the plaintiff would receive the remaining 5%.

[46] During cross examination Mr Letsipa confirmed that he although he had signed an agency agreement with the defendant on the 28 March 2014, he was already

assigned a list of Municipalities which included the Sekhukhune District Municipality by the defendant during December 2013 to canvass business on behalf of the defendant. He had meetings with Mr Saayman to give verbal reports on the progress made and he was also requested to provide written reports and meeting notes between himself and the officials of the municipalities, which he did.

[47] Mr Letsipa testified that there was no other contract signed between Letsijo and the defendant. He testified that he had a verbal agreement with Mr Saayman that he will accept 15% commission and the plaintiff will receive 5%. He confirmed that the other agent was not involved in the negotiations as he was only communicating with Mr Saayman.

[48] It was put to Mr Letsipa that the email from Mr Barnard dated 8 August 2014 indicated that the first meeting with the client (Sekhukhune) was with Rapeipi (Mr Sedibane) and the Municipality was not keen on being involved with a Politian. Mr Letsipa stated that he noted the contents of the email and denied that he is a politician.

[49] Mr Letsipa testified that Letsijo was the effective cause of the contract between the defendant and the Sekhukhune District Municipality and that the letter of appointment was sent to the defendant by the Municipality.

[50] During re-examination Mr Letsipa testified that the agreement between the defendant and Letsijo was sent to him on 30 January 2014 for his signature and he sent it back to the defendant to sign during February 2014.

[51] Mr Letsipa was asked if he is a politician. He testified that he is a professional engineer and he has never been a politician and he has also never been referred to as a politician.

[52] Mr Letsipa further testified that he personally met with the Municipal Manager (MM), Chief Financial Officer (CFO) and the deputy CFO of Sekhukhune District Municipality on 31 January 2014, and they confirmed to him that they will issue the letter of appointment.

[53] The defendant's second witness was Mr Bernard Saayman. The summary of his witness statement is as follows:

53.1 He is the director of the defendant and is also the Chief Operating Officer. The defendant's field of expertise is VAT audits and recovery on behalf of taxpayers, with specific specialization in VAT paid and recoverable by municipalities.

53.2 In many instances the defendant appoint third party agents to negotiate and conclude VAT recovery agreements on its behalf with various municipalities. He admits that the defendant represented by him, concluded an agency agreement with the plaintiff and denies that at the time the agency agreement was signed the annexure "A" was included.

53.3 In respect of the annexure "A" he refers to clause 3.4 of the agency agreement which provides as follows:

> *"The Agent shall only canvass business from clients or potential clients identified by the Company and communicated to the Agent in writing (hereafter referred to as "Approved Clients", specified*

*as per "Annexure A" attached hereto) and the Agent shall not be entitled to approach any other client or potential client"*

53.4 He denies that the plaintiff was authorised to approach the Sekhukhune District Municipality to secure any contracts on behalf of the defendant. He also denied that any Service Level Agreement was concluded between the defendant and the Municipality. As such, the plaintiff never counter signed such an agreement as required by clause 10.2 of the agency agreement.

53.5 He admits that notwithstanding the failure to conclude the Service Level Agreement, the defendant did perform VAT audit and recovery services on behalf of the Sekhukhune District Municipality during the period 1 March 2014 to 31 March 1015.

53.6 He states that he has noticed that the plaintiff refers to a document marked annexure "A" in paragraph 8 of the witness statement of Mr Sedibeng. This document apparently formed part of the plaintiff's supplementary discovery affidavit dated 11 April 2024. The documents discovered in the said supplementary discovery affidavit were not immediately made available to the defendant's attorneys. He instructed the attorneys to obtain a copy of the alleged annexure" A" and they did so by means of an email dated 13 May 2024. Eventually after several further requests and reminders, a copy of the document the plaintiff asserts was annexure "A" to the agency agreement was received on 20 May 2024.

53.7 Mr Saayman denies that the document received from the plaintiff's attorneys, being the purported annexure "A" was ever annexed to the agency agreement and further denies that the defendant had appointed the plaintiff to secure any business from Sekhukhune District Municipality.

53.8 Mr Saayman stated that in respect of the Ephraim Mogale Local Municipality, the situation is different as the plaintiff counter-signed the Service Level Agreement concluded between the defendant and the municipality. For this reason, the plaintiff became entitled to receive the commission in respect of the work performed on behalf on this municipality.

53.9 In respect of the payments received from the Sekhukhune District Municipality and Ephraim Mogale Local Municipality, the evidence contained in the particulars of claim and Mr Sedibeng's witness statement, is factually incorrect.

53.10 In respect of payments received from the Sekhukhune District Municipality, the defendant issued the following invoices for the services performed by it, and received payments on the following dates listed below:

53.10.1 Invoice 10209 dated 2 December 2014, in the amount of R21 059 301.95, which amount was paid on 12 December 2014;

53.10.2 Invoice 10213 dated 4 December 2014, in the amount of R2 908 029.01, which amount was paid on 17 December 2015;

53.10.3 Invoice 10224 dated 6 January 2015, in the amount of R6 031 386.00, which amount was paid on 17 January 2015 (the amount paid was R8 939 415.01, which was payment in respect of two invoices);

53.10.4 Invoice 10268 dated 3 March 2015, in the amount of R216 815.11, which was paid on 25 March 2015;

53.10.5 Invoice 10654 dated 27 June 2016, in the amount of R1 527 059.82, which was paid 12 August 2016;

53.10.6 In total the defendant received a VAT inclusive amount of R31 742 591.89. The defendant did not receive a payment of R37 860 467.76 as alleged by the plaintiff. The defendant attached a copy of the defendant's statement showing a credit note in respect of this payment as well as the credit note no 10194;

53.10.7 The defendant received payment of a VAT exclusive amount of R27 844 378.85 for the work performed on behalf of the Sekhukhune District Municipality during the period of the appointment, being 1 March 2014 to 31 March 2015. Mr Saayman further pointed out that commissions payable to agents are calculated with reference to VAT exclusive amounts. Although the plaintiff recognises this fact in paragraph 7.2 of its witness statement, it proceeds to incorrectly calculated commission with reference to VAT inclusive amounts;

53.10.8 The plaintiff, in its witness statement also claims payment in respect of further commissions related to VAT review and recovery work that the defendant performed on behalf of the Sekhukhune District Municipality during 2020 and

2021. These additional claims do not form part of the plaintiff's pleaded case, and the defendant objects to the inclusion of these claims in the current claim. Mr Saayman stated that he was advised that the inclusion is possibly an attempt to avoid the fact that the potential claims have become prescribed;

53.10.9 Mr Saayman stated that he will, out of an abundance of caution and without any prejudice to the defendant's position in law, respond to the additional claims as follows:

(a) The defendant's appointment by the Sekhukhune District Municipality on which the plaintiff relies for its cause of action, was for a period of one year from 1 March 2014 to 31 March 2015,as stipulated in the agency agreement.

(b) In light of the limited duration of the appointment, all claims for later periods fall outside the window of the appointment and has nothing to do with the plaintiff.

(c) Clause 10.1 of the agency agreement specifically refers to the period during which an agent may become entitled to commission as the initial period, and defines the phrase "initial contract" as follows:

*"The commission payable to the agent for the introduction and successful conclusion of an*

*initial contract between the Company and a client introduced by the Agent, …*

*… The term "initial contract" shall mean the first contract concluded between the Company and the client and exclude any subsequent contracts between the Company and the client, unless the Agent concludes a further agreement as provided for in paragraph 10.5 hereunder."*

(d) Mr Saayman stated that for the avoidance of doubt, he points out that the plaintiff and the defendant did not conclude a further agency agreement on any later date. In fact, on 1 September 2017, the defendant concluded an agency agreement with Phahlana Monare IT Solutions (Pty) Ltd ( Phahlana), a copy of which is attached to the witness statement, in terms of which Phahlana was appointed as an agent. He specifically points out that the annexure "A" to this agreement lists the Sekhukhune District Municipality as an approved client.

(e) Pursuant to the efforts of Phahlana the defendant received a new appointment on 19 December 2019 to perform further VAT recovery services and concluded a Service Level Agreement (SLA) in February 2020, a copy of which is attached to the witness statement. Taking this into consideration the defendant denies that it can be liable to pay further commissions to the plaintiff.

53.10.10 In respect of Ephraim Mogale Local Municipality, the defendant issued the following invoices in respect of the VAT review services it performed, and received payments on the following dates:

53.10.10.1 Invoice 10286 dated 19 March 2015, in the amount of R220 051.56, which was paid on 2 April 2015;

53.10.10.2 Invoice 10689 dated 16 August 2016, in the amount of R33 204.97, which was paid on 31 August 2016;

53.10.10.3 Invoice 10804 dated 1 March 2017, in the amount of R142 143.86, which was paid on 20 March 2017;

53.10.10.4 Invoice 10872 dated 13 June 2017, in the amount of R849 697.60, which was paid on 29 June 2017.

53.10.11 In total, the defendant received VAT inclusive payments from Ephraim Mogale Local Municipality in the amount of R1 254 096.99, which is a VAT exclusive amount of R1 092 191.22.

53.10.12 The defendant made payment to the plaintiff in an amount of R210 268.21 inclusive of VAT, and the plaintiff admits receiving this amount. The defendant is therefore not indebted to the plaintiff at all.

53.10.13 Mr Saayman states that Letsijo Investments (Pty)Ltd (Letsijo) duly represented by Mr Letsipa, is the effective cause of the agreement between the defendant and the Sekhukhune District Municipality. He further states that he is aware of the efforts made by Mr Letsipa to secure the agreement, as he was kept up to date on Mr Letsipa's the meetings and interactions with the Municipal Manager, Ms Mokoko and the Chief Operational Officer, Ms Mokono. He also provided information to Mr Letsipa to enable him to ensure that the municipality could validly appoint the defendant as service provider in terms of regulation 32 of the Municipal Supply Chain Management Regulations, 1 July 2005, Local Government: Municipal Finance Management Act, 56 of 2003.

53.10.14 Mr Saayman stated that, during August 2014, when the dispute about who was the effective cause was raised, he informed Mr Letsipa about the dispute. He proposed through an email dated 7 August 2014, that instead of allowing the dispute to escalate, an agreement should be reached in terms of which the 20% commission be split on a 10% each between the plaintiff and Letsijo. Initially Letsijo rejected the proposal however after some further negotiations, a compromise agreement was concluded in terms of which 5% of the commission would be paid to the plaintiff and Letsijo would receive 15% of the commission related to the Sekhukhune District Municipality.

53.10.15 The plaintiff gave effect to the compromise by issuing 3 invoices calculated at the rate of 5% to the defendant and these invoices were paid in full. The particulars of the invoices and the defendant's reconciliation and proof of payment were attached to the statement and they are as follows:

(a) Invoice dated 12 December 2014 in the amount of R423 772.58. The defendant's reconciliation document dated the same date shows that an advance of R100 000.00 previously made to the plaintiff was deducted and an amount of R309 772.58 was paid.

(b Invoice dated 22 January 2015 in the amount of R271 863.32. The defendant's reconciliation document shows that two advances in the amounts of R148 603.00 and R5 000.00 previously made to the plaintiff were deducted from the payment. Plaintiff was paid the full amount of R271 863.32.

(c) Invoice dated 26 May 2015 in the amount of R 640 033.29, and the amount was paid in full.

53.10.16 Mr Saayman states that the total amount paid to the plaintiff in respect of the three invoices amount to R1 221 669.10. In addition, the plaintiff also received advanced payments in the amount of R253 603.00. As such the total payment received by the plaintiff amounts to R1 325 242.64 plus VAT. This equates to 5% of the VAT exclusive amount earned by the defendant for the services rendered to the Sekhukhune District Municipality. Mr Saayman further states that the amount paid to the plaintiff was paid in consequence of the invoices received and were not simply arbitrary amounts.

53.10.17 Mr Saayman also made mention of the counterclaim in his statement.

[54] It is noteworthy to mention here that the defendant abandoned its counterclaims, and it is not necessary to entertain them any further.

[55] During cross examination Mr Saayman confirmed that the agency agreement is prepared by the defendant and denied that the agreement had an annexure "A".

[56] It was put to Mr Saayman that an agency agreement without an annexure "A" is worthless. His response was no. He stated that after the agency agreement is signed, the agent must send a list of names of which municipalities he proposes to canvass work for the defendant. Thereafter if the defendant agrees, then he will be mandated to canvass those municipalities. He further confirmed that the plaintiff was not appointed to secure business from Sekhukhune District Municipality.

[57] Mr Saayman maintained that the plaintiff did not have the authority to canvass work from the Sekhukhune District Municipality. He testified that the appointment letter was secured by Letsijo. When questioned how he got hold of the letter of appointment, his response was that it must have been emailed to the office. He denied receiving the letter of appointment from Mr Sedibane.

[58] Mr Saayman confirmed that the agency agreement with the plaintiff was signed during January 2013 and that he did attend a meeting with Mr Sedibane and some officials of the Sekhukhune District Municipality. He further stated that he does not remember who they met at the Municipality. After the meeting he told Mr Sedibane to stop engaging with the Municipality.

[59] Mr Saayman confirmed that he wrote an email to Mr Letsipa on 8 August 2014 advising him about the dispute that arose regarding the commission and reminding him that his first meeting with the client was with Mr Sedibane. After some negotiations there was a compromise and Mr Letsipa accepted a compromise of 15% commission and the 5% would be paid to the plaintiff. This compromise was communicated to Mr Sedibane and he agreed.

[60] It was put to Mr Saayman that the plaintiff had no idea what the defendant was being paid by the municipality. His response was that the plaintiff was not the agent in this contract and he would therefore not be given the information of the invoices issued and sent to the municipality. He further testified that those invoices were discovered and they were also in his witness statement. He further testified that when they issue invoices to the municipality, a copy is sent to the agent so that the agent can assist with collection of the payment from the municipality and for the agent to know the amount invoiced.

[61] Mr Saayman was questioned about why the 5% commission was never indicated on the payment invoices generated by the defendant before the 26 May 2015. He testified that this was included after the plaintiff agreed to accept the 5%. He further stated that this was not a new commission as the plaintiff was

not an agent on this contract. It was a compromise in acknowledgment of the initial meeting arranged by Mr Sedibane.

[62] It was put to Mr Saayman that the defendant received payments from the Sekhukhune District Municipality in 2016, and the plaintiff believes he is entitled to commission on that payment as the work done was based on the 26 February 2014 letter of appointment. He testified that they received new work from the Municipality and a new Power of Attorney was given to the defendant during April 2016. He further stated that the 2020 payment was in regard to a tender that was awarded to the defendant and the service level agreement for that appointment was discovered. The new work was not canvassed by the plaintiff, and an appointment letter cannot be for longer than three years.

[63] During re-examination Mr Saayman confirmed that the defendant was appointed by the Sekhukhune District Municipality in terms of Regulation 32 of the Municipal Supply Chain Management Regulations. He further explained that the regulation allows for circumstances where a municipality has awarded a tender to someone, then another municipality can link in on the contract for the same fee or less for not more that 2.6 months. He confirmed that the defendant has never been appointed to do work for the municipality for more than three years.

[64] He further confirmed that after the 5% compromise was agreed upon, Mr Sedibane was given the invoice that was sent to the municipality and the payments received from the municipality. Thereafter after some discussions with Mr Sedibane the invoice for the 5% was issued and Mr Sedibane signed the invoice.

[65] At the heart of this matter is whether an annexure "A" was attached to the agency agreement that was concluded between the parties.

[66] **Section 15 of the Civil Proceedings Evidence Act, 25 of 1965** provides as follows:

> *"Admissions on Record*
>
> *It shall not be necessary for any party in any civil proceedings to prove nor shall it be competent for any such party to disprove any fact on the record of such proceedings."*

[67] In paragraph 4 of the amended particulars of claim, the plaintiff pleads as follows:

> *"On or about 17 January 2013 and at Pretoria the plaintiff, duly represented by Sedibane Rapeipi entered into a written agreement of agency with the defendant, duly represented by its Chief Operational Officer, Bernard Saymaan. A copy of the agreement is attached hereto, marked annexure "CMP1."*

[68] In its plea the defendant admitted the allegations in paragraph 4 of the particulars of claim. It is common cause that the agency agreement relied upon by the plaintiff and attached to the particulars of claim as annexure "CMP1" does not contain the annexure "A" as stipulated in clause 3.4 of the agency agreement.

[69] It is therefore an admitted fact on the pleadings that the annexure "A" was not annexed to the agency agreement relied upon by the plaintiff.

[70] The allegation made in paragraph 4 of the amended particulars claim was repeated by Mr Sedibane in his witness statement. However, during cross examination, Mr Sedibane testified that the annexure "A" was attached to the agency

agreement on the day the agreement was signed. He however could not explain to the court why the said annexure "A" was not attached to the particulars of claim. It is also noteworthy to mention at this point that the annexure "A" was also not attached to Mr Sedibane's witness statement which was uploaded onto carelines on 4 April 2024.

[71] In his witness at paragraph 8, Mr Sedibane stated that the annexure "A" has been disclosed through discovery and it bears the initials of Mr Saymaan at the bottom thereof. The court observed that the annexure "A" was not attached to the witness statement. He also testified during cross examination that the annexure "A" was in fact annexed to the agency agreement on the day it was signed.

[72] Upon careful scrutiny regarding the discovery of the annexure "A" by the plaintiff the following has been observed:

72.1 The summons was issued on 19 February 2018, and the agency agreement was attached to the particulars of claim, and the annexure "A" was not attached.

72.2 On 26 February 2020, Mr Sedibane deposed to his first discovery affidavit and the annexure "A" was not discovered by the plaintiff.

72.3 On 10 April 2024, more than six years after the institution of the action, a supplementary discovery affidavit was delivered by Mr Sedibane. Item 6 in the first schedule (Part A) is referred to as "*annexure "A" – Sekhukhune District Municipality is listed on the annexure.*" The date of the document is stated as 30 November 2020.

72.4 The annexure "A" mentioned in the supplementary discovery affidavit was not immediately made available to the defendant. According to Mr Saymaan, in paragraph 15 and 16 of his witness statement, his attorneys struggled to get the document from the plaintiff's attorneys and when it was eventually produced the defendant denied that the said document was annexed to the agency agreement.

72.5 Mr Sedibane could not explain why the Annexure "A" he insists was annexed to the agency agreement had gone missing let alone how it mysteriously resurfaced.

72.6 Upon closer scrutiny of the annexure "A" produced by the plaintiff after six years, the document bore remarkable resemblance to the one that was given to Letsijjo. Mr Sedibane could not explain why the handwriting on the document produced by the plaintiff had two different handwritings.

72.6 The court observed that the plaintiff produced the annexure "A" on 20 May 2024, which is after the Mr Sayman had filed his witness statement and had attached the annexure "A" that was given to Letsijo. What is also disturbing is the fact that the numbering of the document (F132) is similar to the numbering on the document attached to Mr Saymaan's witness statement. However, the handwriting of the Sekhukhune District Municipality and Ephraim Mogale Local Municipality on this document are not the same. During cross examination Mr Sedibane could not explain why the handwritings are not the same on the annexure.

[73] The agency agreement is crystal clear at clause 3.4 and states as follows:

*"The agent shall only canvass business from clients or potential clients identified by the Company* and communicated to the Agent in writing (hereinafter referred to as "the Approved Clients", specified as per "Annexure A" attached hereto) and the Agent shall not be entitled to approach any other client or potential client. ..."

[74] I am of the view that the version of Mr Sedibane that the document produced by him after six years is the annexure "A" that he purports was annexed to the agency agreement when they signed is probably not true and stands to be rejected by the court.

[75] The other concern that I have with the plaintiff's matter is that the plaintiff's pleaded case is for a claim for damages from the defendant based on the agency agreement concluded between the parties. However, during the trial, the plaintiff's witness gave evidence on the basis that it seeks payment of a contractual debt, that is specific performance.

[76] In the matter **Molusi and others v Voges NO and others 2016 (3) SA 370 CC at para 28,** the apex court stated as follows"

> *"The purpose of pleadings is to define the issues for the other party and the court. And it is for the court to adjudicate upon the dispute and those issues alone ..."*

[77] It is common cause that the plaintiff's case is based on the agency agreement. For the plaintiff to succeed in its claim, it should have pleaded that it had complied with the express terms of the agreement.

[78] I have already found that there was no annexure "A" annexed to the agency agreement and this in my view collapses the plaintiff's case. The defendant had no authority to approach or canvass for work from the Sekhukhune Municipality.

[79] Mr Sedibane testified that he was the effective cause of the agreement between the defendant and the Sekhukhune District Municipality as he was the one who first introduced them. Mr Sayman confirmed the first meeting however he testified that he stopped Mr Sedibane from interacting any further with the municipality. Mr Sedibane could not produce any evidence of his endeavors to secure the contract. The other agent who was given the annexure "A" did produce reports, meeting notes and emails showing exactly what he did and who he met at the municipality to secure the contract. I am not convinced by Mr Sedibane's evidence and his version stands to be rejected by the court.

[80] I am of the view that the plaintiff has failed to present the necessary evidence to succeed in its claim

[81] In the premise the following order is made:

1. The plaintiff's action is dismissed with costs, including the costs of counsel on scale C.

[redacted]

**MMD LENYAI J**

**JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION, PRETORIA**

**Appearances**

| | | |
|---|---|---|
| Counsel for Plaintiff | : | Adv C Dauds |
| Instructed by | : | Ramushu Mashile Twala Inc |
| Counsel for Defendant | : | Adv AJP Els SC |
| Instructed by | : | Ey Stuart Inc |
| Date of hearing | : | 08 September 2025 |
| Hearing Resumed | : | 10 September 2025 |
| Plaintiff filed Heads of Argument | : | 18 September 2025 |
| Defendant filed heads of Argument. | : | 25 September 2025 |
| Hearing of Closing Arguments | : | 25 September 2025 |
| Date of Judgement | : | 24 February 2026 |