

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 070776/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
19/2/26	[Redacted Signature]
DATE	SIGNATURE

In the matter between:

ORICRED (PTY) LIMITED

Applicant

Registration number: 2022/309147/07

and

KGUDISA PEU MEDIA (PTY) LIMITED

Respondent

Registration number: 2019/208146/07

JUDGMENT

ALLY, AJ

- [1] This is an opposed application for payment of the amount of R504 390-17 (five hundred and four thousand three hundred and ninety rand and seventeen cents) in terms of a discounting agreement between the parties.

- [2] The applicant was represented by Adv. A. Taljaard and the respondent was not represented at all at the hearing of the application. No communication was received regarding such absence, by the applicant's representatives nor by the Judge's secretary. This absence without communication is disappointing to the say the least taking into account that there was no withdrawal of representation by the Attorneys of record.
- [3] The respondent's representatives also, did not bother to submit heads of argument.
- [4] The Court, however, did have a copy of the answering affidavit of the respondent and will consider same in adjudicating this matter.
- [5] The respondent raised two points *in limine* in its answering affidavit, namely:
- i). the applicant has chosen the incorrect procedure in claiming the abovementioned amount allegedly claimed;
 - ii). there has been an undue delay in claiming the abovementioned amount to the prejudice of the respondent which amounts to an abuse of process of process and thus warrants a dismissal.
- [6] It is a pity that the respondent was not present to flesh out the points *in limine* so as to persuade the court of their appropriateness in the circumstances of this case.
- [7] Be that as it may, the applicant has contended that the points *in limine* are without merit. Firstly, applicant's Counsel submits that the first point *in limine* is misplaced in that in the present matter the Court is dealing with a liquid claim. In this regard, as I understood Mr Taljaard, the claim is one that is easily determinable by making calculations from the figures apparent in the agreement¹. Furthermore, the agreement² contains a certificate of debt clause which is similar to certificates of balance found in cases involving banks.

¹ Fatti's Engineering Co (Pty) Ltd v Vendick Spare (Pty) Ltd 1962 (1) SA 736 @ 739

² Caselines: Section 006-21 – 006-35

- [8] I am in agreement with Mr Taljaard that the claim by the applicant is a liquidated one capable of easy determination recognised by our courts³.
- [9] Secondly, the applicant's Counsel submits that the second point *in limine* holds no water and that the case⁴ relied on by the respondent is distinguishable on the facts. Mr Taljaard submits that the most distinguishable factor between the **Cassimjee case**⁵ and the present case before court is that the delay in the **Cassimjee case** was twenty years.
- [10] In respect of the prejudice, Mr Taljaard submits that the parties entered into an agreement freely and voluntarily and the respondent agreed to all the terms which included the penalty fee and they cannot now cry foul at the time of repayment.
- [11] No argument has been made by the respondent that the agreement is contrary to public policy, specifically, the respondent by its absence has not shown nor persuaded this Court that certain clauses should be struck out for being contrary to public policy. In any event a court must be wary of declaring contracts to be contrary to public policy⁶.
- [12] Insofar as is necessary, in my view, there is no dispute of fact of the kind mentioned in the well-known case of **Plascon Evans** and the cases dealing with the referral to oral evidence of disputes of fact that cannot be resolved on the papers⁷. The said cases insist on there being a genuine or *bona fide* dispute of fact. The respondent does not take the court into its confidence in disputing the amount claimed and thereby indicating what amount is owed. Such conduct does not, in my view, amount to laying a basis for a genuine dispute of fact but rather a bare denial which cannot be countenanced by this court.
- [13] Taking the above into consideration, it is my view that the applicant has made out a case for the amount claimed.

³ Unreported judgment: Thaw Trading v Central Lake Trading 214 (Pty) Ltd 2013 NWHCM @ para16 and the cases mentioned therein

⁴ Cassimjee v Minister of Finance 2014 (3) SA 198 SCA

⁵ *supra*

⁶ Afrox Healthcare Beperk v Strydom 2002 (6) SA 21 para 8

⁷ Wightman v Headfour (Pty) Ltd & Ano 2008 (3) SA 371 SCA

[14] In respect of costs, the norm that costs should follow the result must pertain in this matter. However, the applicant has submitted that costs should be awarded on an attorney and client scale as same is contained in clause 10.3 of the agreement. Accordingly, the applicant is entitled to invoke the scale of attorney and client costs.

[15] Accordingly, the following Order shall issue:

- a). the Order marked "X" is made an order of court.


ALLY. G
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 19 February 2026.

Date of hearing: 1 September 2025

Date of judgment: 19 February 2026

For the Applicant:

Adv. A. Taljaard instructed by

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For the Respondent:

No appearance

MAKGAILA & ASSOCIATES

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