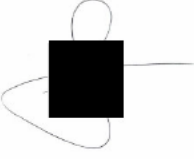




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2024/064393

DOH: 21 AUGUST 2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES:NO
(3)	REVISED: NO
	
SIGNATURE	<u>18 MARCH 2026</u> DATE

In the matter between:

**ALPS REFRIGERATION AND
ENERGY**

Applicant

And

VAKURU HOLDINGS

Respondent

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 18 March 2026.

JUDGMENT

Mali J

- [1] This is an application for summary judgment for the payment of the sum of R47 079.82 (Forty-seven thousand and seventy-nine rand and eighty-two cents) payable. The applicant is a company duly registered within the laws of the Republic, which specializes in installations, repairs and maintenance of electric pumps and among other engineering works. The respondent is a company duly registered within the laws of the Republic.
- [2] The claim arises from a written agreement concluded between the parties during February 2024 for the supply and installation of a condenser pump and related components for an Ammonia Refrigeration Plant at a third-party site.

The Contractual Background

- [3] On or about 26 February 2024, the parties concluded a written contract in terms of which the applicant undertook to supply specified parts, a new condenser pump, and to perform installation work. The agreed contract price was R75 721.59, fixed and firm, not subject to escalation or exchange rate fluctuations, and exclusive of VAT ("the Order Price"). The respondent undertook to pay a deposit of R60 000.00, however the respondent paid only R40 000.00. Despite the short payment, the applicant proceeded with and completed the works in accordance with the agreement.
- [4] The respondent has failed to pay the outstanding balance of R47 079.82, notwithstanding demand. The applicant thereafter instituted action proceedings and now seeks summary judgment.

The Respondent's Defence

- [5] The respondent raises, in essence, the following defences:
- (a) That the contract was valid only from 20 February 2024 until 4 March 2024;
 - (b) That no written agreement was concluded extending the contract beyond March 2024 as required by clause B.1.17.3 of the agreement;

(c) That the payment of R40 000.00 was made pursuant to a verbal agreement concluded after the alleged lapse of the contract;

(d) That the invoice relied upon does not constitute a liquid document because the underlying contract was invalid.

Clause B.1.17.3 of the agreement provides:

“No alteration, variation, amendment or modification of the Order or any of the terms hereof shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties.

The Applicable Legal Principles

[6] Summary judgment is an extraordinary and stringent remedy. Its purpose is to enable a plaintiff with a clear case to obtain swift enforcement of a claim where the defendant has no bona fide defence.

[7] In *Maharaj v Barclays National Bank Ltd*¹, the Appellate Division held that a defendant resisting summary judgment must satisfy the court that he or she has a bona fide defence and must fully disclose the nature and grounds thereof and the material facts relied upon. In *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*², the Supreme Court of Appeal reaffirmed that summary judgment is intended to prevent sham defences and delay. More recently, in *Majola v Nitro Securitisation*³, the court reiterated that where a defendant fails to disclose a genuine and triable defence, summary judgment must follow.

¹ 1976 (1) SA 418 (A) 426.)

² [2009] 3 All SA 407 (SCA) (27 March 2009)

³ 2012(1) SCA 226, para 25.

- [8] Following the amendments to Rule 32, in *Tumileng Trading CC v National Security and Fire (Pty)*⁴ Ltd confirmed that the core enquiry remains whether the defendant has disclosed a *bona fide* defence to the claim.
- [9] A claim for a fixed and agreed contractual amount constitutes a claim for a liquidated amount of money within the meaning of Rule 32.

Evaluation

- [10] Regarding the alleged lapse and non-variation clause, the respondent's principal defence is that the contract lapsed on 4 March 2024 and was not revived in writing as required by clause B.1.17.3. It is, however, common cause that the applicant performed the work and that the respondent accepted and benefited from such performance. The respondent cannot accept performance and thereafter rely on an alleged technical lapse to avoid its reciprocal obligation to pay.
- [11] In *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren*⁵, the Court upheld the enforceability of non-variation clauses. Nevertheless, the *Shifren* principle does not permit a party who has accepted full performance to evade payment based on a technical argument unrelated to the quality or existence of performance. Moreover, a waiver may arise from conduct. In *Nkengana v Schnetler*⁶, the court held that a party may waive strict compliance with contractual provisions, and such waiver may be inferred from conduct.
- [12] The respondents' payment of R40 000.00 and its acceptance of completed performance are inconsistent with an intention to treat the contract as having lapsed.
- [13] On reciprocity the agreement is a bilateral contract involving reciprocal obligations. In *Botha and Another v Rich NO and Others*⁷, the Constitutional Court emphasised that bilateral contracts are cooperative ventures grounded

⁴ [2020] ZAWCHC 28

⁵ 1964 (4) SA 760 (a)

⁶ [2010] ZASCA 64; para 13

⁷ [2014] ZACC 11

in reciprocity and good faith. Where one party has rendered full performance, the other is obliged to render its counter-performance unless a recognised defence exists. The following is instructive:

“Bilateral contracts are almost invariably cooperative ventures where two parties have reached a deal involving performances by each in order to benefit both. Honouring that contract cannot therefore be a matter of each side pursuing his or her own self-interest without regard to the other party’s interests. Good faith is the lens through which we come to understand contracts in that way. In this case, good faith is given expression through the principle of reciprocity and the exceptio non- adimpleti contractus.”

- [14] The respondent does not allege defective performance nor invoke the *exceptio non- adimpleti contractus*. Its defence rests solely on alleged invalidity arising from non-compliance with the non-variation clause. That defence is unsustainable considering the undisputed performance and acceptance thereof.
- [15] Pertaining the defence of unliquidated amount and *bona fide defence* the applicant’s claim is for a fixed contractual amount less payment received. The indebtedness is readily ascertainable. In *Breitenbach v Fiat SA (Edms) Bpk*⁸, the court held that a defendant opposing summary judgment must set out facts which, if proved, would constitute a defence in law. Bald or technical defences do not suffice.
- [16] The respondent has failed to disclose facts which, if established at trial, would constitute a valid defence against the claim for payment. The defence is technical, inconsistent with the respondent’s conduct, and does not raise a triable issue.

⁸ 1976 (2) SA 226(T) at 227G-228B

Conclusion

[17] In conclusion the applicant has established: a valid written contract; full performance; an agreed and liquidated outstanding balance; the absence of a *bona fide* defence. The applicant is accordingly entitled to summary judgment.

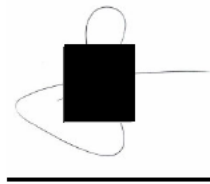
Order

1. In the result the respondent is ordered to pay:

1.1. The sum of R47 079.82 (Forty-seven thousand and seventy-nine rand and eighty-two cents).

1.2. Interest on the above sum at the rate of 11.25% per annum from the date of summons to the date of the final payment.

2. The respondent is ordered to pay costs at Magistrate's Court Scale.

A handwritten signature in black ink, consisting of a stylized 'N' and 'P' followed by 'MALI', written over a solid black rectangular stamp.

N. P. MALI

JUDGE OF THE HIGH COURT

Appearances

For the applicant: Mr MT Nkobi

Instructed by: Nkobi Attorneys Inc

For the respondent: Mr Frank Richards

Instructed by: Richards attorneys Inc

Hearing date: 21 August 2025

Delivery date: 18 March 2026

