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

Case No: 2025-001487

1. REPORTABLE: YES/NO

2. OF INTEREST TO THE JUDGES: YES/NO

3. REVISED

DATE: 22 April 2026

SIGNATURE:

Neutral citation: **Ngoepe AR & Another V. Kgomo & Nsibande Inc And Others**

Coram: Mphaga AJ

Heard: 29 October 2025

Delivered: 22 April 2026

Summary: Summary Judgment

In the matter between:

ANDRIES RAPULA NGOEPE

First Applicant

DANIEL MATHEWS KEKANA

Second Applicant

and

KGOMO & NSIBANDE INC

First Respondent

THULANI MATIKI NORMAN

Second Respondent

JUDGMENT

INTRODUCTION

[1] This application concerns a claim brought by the applicants who are practicing advocates and who rendered professional services at the instance of the first respondent, an incorporated attorneys' practice. They invoiced for those services in terms of the briefs by which they were retained. The respondents do not dispute that the services were rendered. They do not dispute that invoices were delivered. They do not dispute that partial payments were made. Yet they resist summary judgment on the footing that the applicants were bound either by a taxed party-and-party bill or by a contingency fee arrangement concluded elsewhere and with others. The question is whether those assertions amount to a *bona fide* defence. They do not.

[2] At the heart of the matter lies a straightforward proposition. A legal practitioner who briefs counsel undertakes obligations to counsel according to the terms of that brief. Those obligations are not dissolved, diluted or deferred merely because the attorney may, in turn, have concluded a different fee arrangement with the client. To hold otherwise would introduce uncertainty into a part of legal practice that depends, for its integrity, on clarity, professional candour and fidelity to agreement.

THE ISSUES

[3] The applicants seek summary judgment in the sum of R957 750.00 in favour of the first applicant and R119 000.00 in favour of the second applicant, together with interest and costs. The respondents oppose the relief on four broad bases: **first**, that the applicants were paid in full according to amounts taxed by the Taxing Master; **second**, that the applicants were aware of and accepted a contingency-fee arrangement; **third**, that no separate agreement enforceable against the respondents has been established; and **fourth**, that this Court lacks jurisdiction. The issues are narrow. The answer is narrower still.

[4] The first applicant's claim arises from a written brief to counsel concluded at Pretoria on or about 6 March 2012 between him and the first respondent, then styled TMN Kgomo & Associates Inc, in relation to litigation between **Sifiso Bheki Ndlovu obo Thando Thapelo Ndlovu and the MEC for Education, Mpumalanga Province and Another**. The second applicant's claim arises from an oral brief concluded at Pretoria on or about 1 June 2021 in the same matter. On the applicants' version, which is borne out by the supporting papers, the material terms were plain: each applicant would render professional services at an hourly rate of R2 800.00; an invoice would issue upon execution of the mandate; and payment would be made on presentation, in the case of the first applicant within 30 calendar days.

[5] The services were rendered. Invoices were issued. The first applicant rendered invoices in the amounts of R417 200.00 and R765 750.00. The second applicant rendered an invoice in the amount of R196 000.00. The respondents thereafter made partial payments to the first applicant in the amounts of R150 000.00 and R75 200.00, and to the second applicant in the amount of R77 000.00. Those payments reduced the first applicant's claim to R957 750.00 and the second applicant's claim to R119 000.00.

DISCUSSION

[6] The aforementioned facts in paragraph [5] matter. They matter not merely because they quantify the claim, but because they expose the essential difficulty in the respondents' case. A litigant who denies the existence of an agreement while simultaneously relying on the terms of that very agreement, or on some variant of it, does not raise a genuine triable issue. The respondents' plea and opposing affidavit are marked by precisely that contradiction.

[7] Summary judgment is not granted for the asking. Rule 32 requires the Court to be satisfied that the defendants have not disclosed a bona fide defence or that the defence advanced is not bona fide in law. The rule protects a defendant with a real defence; it does not protect artifice, contradiction or delay. In this regard the authorities relied upon by the applicants remain important. In *Petersen NO and*

*Others v Shoe Warehouse South Africa (Pty) Ltd t/a Shoe Warehouse and Another*¹ and in *Jovan Projects (Pty) Ltd v /CB Property Investments (Pty) Ltd*², the courts stressed that a defendant resisting summary judgment must do more than offer conclusions. Facts must be advanced which, if proved at trial, would constitute a defence in law. A formulaic invocation of a dispute is not enough.

[8] The same theme runs through *Mathimba and Others v Nonxuba and Others*³. Courts are not required to avert their gaze from the objective probabilities appearing on the papers. Where conduct, admissions and contemporaneous documents point in one direction, a court is entitled to say so. It would be a strange conception of justice that compelled a court to ignore what is plain in the name of preserving a trial for its own sake.

[9] More recent apex-court jurisprudence confirms this approach. In *University of Johannesburg v Auckland Park Theological Seminary*⁴ the Constitutional Court reaffirmed that interpretation is a unitary exercise in which text, context and purpose must be considered together. The same discipline applies here. One cannot isolate the taxed order obtained in the underlying litigation and treat it as though it were the sole source of the respondents' obligations to counsel, while ignoring the text and context of the briefs under which counsel were engaged. So too, in *Davison v Mpambaniso*⁵, the Supreme Court of Appeal emphasised the importance of documentary evidence and probabilities in resolving disputes about whether a mandate existed and on what terms. This Court is not called upon finally to decide disputed oral evidence after trial; it is called upon to decide whether the respondents have disclosed a defence which is genuine and legally cognisable. Their papers do not do so.

[10] I begin with the defence based on taxation. The respondents argue that the applicants' fees were ultimately subject to taxation because, in the underlying action, the court ordered that the defendants pay the plaintiff's taxed or agreed party-and-

¹ (2022/8054) [2023] ZAGPJHC 934 (17 August 2023)

² (2020/32427) [2021] ZAGPJHC 836 (20 December 2021)

³ 2019 (1) SA 550 (ECG) (18 September 2018)

⁴ 2021 (6) SA 1 (CC) (11 June 2021)

⁵ (1330/2024) [2026] ZASCA 50 (14 April 2026)

party costs, including the costs of two counsel. That submission elides two distinct juristic relationships. The first is the relationship between the attorney and the client in the principal action. The second is the relationship between the attorney and counsel engaged by brief. The fact that the former may culminate in a taxed party-and-party bill does not, without more, determine the content of the latter. *Solomon and Another v Junkeeparsad*⁶ is instructive in this regard. It underscores that a practitioner's liability to another practitioner may arise from the agreement between them and is not automatically contingent on what may be recoverable from a client or an opposing litigant.

[11] That distinction is decisive here. The applicants' case is not that they are entitled to a share of whatever was taxed in the Ndlovu matter. Their case is that they were retained on specified terms, rendered the work, invoiced in accordance with those terms, and were not paid in full. The respondents do not point to any term in either brief that made the applicants' entitlement dependent upon taxation. Nor do they identify any written stipulation that payment to counsel would be limited to such amounts as a Taxing Master might later allow on a party-and-party scale. The respondents' case rests, therefore, not on the terms of the briefs, but on an after-the-fact attempt to substitute a different source of obligation for the one they accepted when they retained counsel.

[12] The respondents' own conduct deepens the difficulty. The applicants submitted their invoices between 29 July 2021 and 15 February 2022. The respondents' contention that the applicants knowingly awaited taxation sits uneasily with the chronology. If the invoices were truly contingent on taxation, one would expect a contemporaneous record saying so. None is produced. What is produced, instead, are partial payments made years later. Those payments are far more consistent with an acknowledgement of indebtedness than with a considered position that nothing was due beyond what taxation later yielded.

[13] The second defence fares no better. The respondents allege that they had concluded a contingency fee agreement with their client and that the applicants knew

⁶ 2022 (3) SA 526 (GJ) (2 September 2021).

of it and accepted that they would be paid only once the matter was finalised and costs recovered. There are several difficulties with that submission. The first is statutory. Section 3(2) of the Contingency Fees Act 66 of 1997 requires a contingency fee agreement to be signed by the client and the attorney and, where applicable, countersigned by the advocate concerned, who thereby becomes a party to the agreement. The respondents produce no compliant agreement countersigned by either applicant. The absence of such an instrument is not a technical inconvenience. It is fatal to the proposition that the applicants became parties to a contingency fee arrangement.

[14] The second difficulty is conceptual. Even if the respondents had a contingency fee agreement with their client, that agreement would not, without more, bind third parties who were not parties to it. It is a basic principle of our law that obligations do not lightly travel beyond the parties who assumed them. The respondents cannot invoke a fee arrangement with their client as a shield against a separate contractual obligation owed to counsel unless counsel clearly acceded to that arrangement. No such accession is established on these papers.

[15] The third difficulty is evidential. The respondents' allegation that the applicants were informed of, and agreed to, contingency-based payment is unparticularised and unsupported. It is not enough to say that the applicants must have known because they did not immediately sue after judgment in the underlying matter. Delay, without more, proves little. But partial payment proves a good deal more. It is the respondents' payments, not the applicants' patience, that speak most loudly in the record.

[16] The respondents also seek to deny the existence of a separate enforceable agreement while admitting that the applicants rendered services, issued invoices, and were paid in part. That cannot stand. A denial that is contradicted by one's own pleaded case and by one's own conduct is not the disclosure of a *bona fide* defence. It is, at best, an attempt to occupy mutually inconsistent positions in the hope that one of them may suffice to postpone the day of reckoning.

[17] The jurisdiction point may be dealt with shortly. The first written brief was accepted at Pretoria. The second oral brief was concluded at Pretoria. The services were rendered in litigation heard and finalised in the Gauteng Division, Pretoria. On the applicants' uncontested version, the contracts were performed wholly or partly in Pretoria and the breach occurred there. The respondents' reliance on the fact that they conduct business in Mpumalanga, or that a brief bore a Mpumalanga address, does not dislodge the real connecting factors. This Court has jurisdiction.

[18] The applicants also relied on *Mafoke Security Patrols (Pty) Ltd v University of KwaZulu-Natal & Another*⁷. The principle established in that case, is relevant here, that litigation must be approached on the basis of substance rather than semantic manoeuvre. A court is not obliged to elevate labels over legal reality. The respondents' second so-called special plea of 'debt paid in full' is, on any sensible view, not an independent special plea at all, but a substantive defence to the merits. And on the merits it fails, because the respondents themselves do not dispute that the applicants' invoices exceeded what was ultimately paid.

[19] The broader constitutional setting should not be overlooked. Courts exist not only to hear disputes, but to resolve them lawfully, fairly and effectively. That is why section 34 of the Constitution is not exhausted by the formal opportunity to enter an appearance to defend. Procedure is not an end in itself. In *Systems Applications Consultants (Pty) Ltd t/a Securinfo v SAP SE and Another*⁸, the Supreme Court of Appeal recently reiterated the centrality of procedural legitimacy to adjudication. And in *Black Sash Trust v Minister of Social Development and Others*⁹, the Court emphasised that judicial relief must be practical, sensible and just. Those cases arose in very different contexts, but the values they illuminate are germane here. A court should not permit procedure to become a refuge for defences that are legally empty and factually self-defeating.

[20] It is so that summary judgment must be granted with care. But care is not caution's synonym when caution becomes paralysis. The present matter does not

⁷ (9313/2020) [2023] ZAKZDHC 22 (12 May 2023)

⁸ [2024] 2 All SA 639 (SCA); 2024 (5) SA 514 (SCA) (20 March 2024)

⁹ 2018 (12) BCLR 1472 (CC) (27 September 2018)

involve a genuinely uncertain contract, an unresolved factual matrix, or a defence requiring oral evidence for its proper ventilation. The respondents admit the rendering of services. They admit the issuing of invoices. They admit partial payment. They produce no term of the brief making payment contingent on taxation. They produce no contingency fee agreement binding the applicants. They produce no coherent answer to the applicants' case that survives scrutiny when text, context and probability are read together.

[21] What remains, then, is a set of assertions that do not cohere: no agreement, but an agreement subject to contingency; no indebtedness, but partial payment; full payment, but only by reference to a different legal relationship; no jurisdiction, despite conclusion, performance and breach in Pretoria. That is not a triable issue. It is a collage of objections assembled in aid of delay. The applicants have therefore established entitlement to summary judgment.

COSTS

[22] As to costs, the applicants seek costs on the attorney-and-client scale. The respondents are legal practitioners. They retained counsel, accepted performance, made part payment, and then advanced defences that are mutually contradictory and unsupported by the instruments on which they rely. In those circumstances, a punitive costs order is justified.

[23] The following order is made:

1. Summary judgment is granted in favour of the first applicant against the respondents, jointly and severally, the one paying the others to be absolved, in the amount of R957 750.00.
2. Summary judgment is granted in favour of the second applicant against the respondents, jointly and severally, the one paying the others to be absolved, in the amount of R119 000.00.
3. The respondents are directed to pay interest on the aforesaid amounts at the prescribed legal rate, calculated from the date of suit to date of final payment.

4. The respondents are directed, jointly and severally, the one paying the others to be absolved, to pay the costs of suit and the costs of the application for summary judgment on the scale as between attorney and own client, including the cost of counsel on Scale C.

5. The above-mentioned amounts to be paid to the Applicants' Attorneys by direct transfer into their trust account with the following details:

Account Name: TT Mpshe Attorneys Inc

Bank Name: First National

Bank Account Number: 6[...]

Branch Code: 251445

Reference Number: 2025-001487

MPHAGA AJ
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Applicant:

Instructed by: TT MPSHE ATTORNEYS

Advocate for the Applicant: Adv H.A. MPSHE

For the Respondents:

Instructed by: V.M. NSIBANDE