

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No: **2492/2023**

In the matter between:

MALOME BUSINESS ENTERPRISE CC

Plaintiff / Excipient

and

**MEMBER OF THE EXECUTIVE COMMITTEE
FOR THE DEPARTMENT OF ROADS AND
PUBLIC WORKS, NORTHERN CAPE**

Defendant / Respondent

Neutral citation: *Malome Business Enterprise CC v MEC for the Department of Roads and Public Works, Northern Cape* (Case No: 2492/2023)
Coram: Coetzee AJ
Date of Judgment: 27 March 2026

ORDER

- [1] The exception is upheld.
- [2] The Defendant is granted 15 (Fifteen) days to amend the plea.
- [3] Failing to amend its plea, the plea of set-off shall be struck out.
- [4] No order as to costs.

JUDGMENT

- [1] The plaintiff has filed an exception to the defendant's alternative plea on the grounds that it fails to disclose a defence. Specifically, the exception challenges the plea of set-off raised by the defendant.
- [2] The essential requirements for a plea of set-off are well established. It must allege that:¹
 - (a) The plaintiff is indebted to the defendant.
 - (b) The debts are mutual and between the same parties in the same capacities.
 - (c) The debts are liquidated or readily ascertainable in money; and
 - (d) The debts are due and payable at the time the set-off is invoked.

¹ *McKelvey v Cowan NO 1980 (4) SA 525 (ZSC)* and *Trope v South African Reserve Bank* 1992 (3) SA 208 (T)

[3] In the present matter, the defendant pleads as follows:

“1. *The Defendant pleads that in the event the Court finds that it is liable for the claim above, his liability or indebtedness towards the Plaintiff was extinguished by set-off by virtue of the following facts:*

- a) *On 28 September 2017, there was a site handover of the project, the Plaintiff has a period of 12 months to complete the construction of the clinic by at least 28 September 2018.*
- b) *On 19 December 2018, there was a request for an extension of time due to the Plaintiff's failure to complete the task within the stipulated timeframes as per the agreement.*
- c) *There was an extension of time to enable the Plaintiff to complete the construction of the clinic as per the agreement, which extension is not disputed.*
- d) *In terms of the revised timeframes for the completion of the work, the Plaintiff has until 12 June 2019 to complete the construction of the clinic, which the Plaintiff failed to do.*
- e) *On 13 June 2019, the Defendant imposed penalties for the delay in completion of the project for an amount of R1 164 000.00, this amount has not been paid to the Defendant by the Plaintiff. Even if the Plaintiff were to succeed on the main claim, this amount will cancel their claim in the form of set-off of the contractual liability which is disputed by the Defendant for the reasons*

advanced above.

f) Second to this, the Defendant imposed the second penalty when the Plaintiff failed again to complete the construction of the clinic within the stipulated timeframes, of R714 000.00.

g) The entire amount which the Plaintiff owes the Defendant in the present case, which comes as a result of penalties imposed due to breach of agreement for failure to complete the construction work, amount to R1 878 000.00."

[4] The plaintiff's counsel, Mr Eillert, submitted that the following essential averments to sustain a plea of set off has not been pleaded:

"21.1) That the alleged debt for penalties is liquidated.

21.2) The facts relied upon for contending that the alleged debt for penalties is liquidated.

21.3) That the alleged debt for penalties is due and payable.

21.4) When the alleged debt for penalties fell due and payable.

21.5) The facts relied upon for contending that the alleged debt for penalties is due and payable."

[5] The above referred to submission is correct and the exception should be upheld.

ORDER:

1. THE EXCEPTION IS UPHELD.
2. THE DEFENDANT IS GRANTED 15 DAYS TO AMEND THE PLEA.
3. FAILING TO AMEND ITS PLEA, THE PLEA OF SET-OFF SHALL BE STRUCK OUT.
4. NO ORDER AS TO COSTS.


COETZEE AJ
HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION,
KIMBERLEY

For the Plaintiff / Excipient:
On instruction of:

ADV A EILLERT
MacRobert Inc.
c/o Roux Welgemoed Du Plooy
Kimberley

For the Defendant / Respondent:
On instruction of:

ADV RC MATHEVULA
Motlhamme Pino Attorneys
Kimberley