

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 029705/2024

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

Date: 25 May 2026

E van der Schyff

In the matter between:

BATHLOKOMEDI MANAGEMENT SERVICES CC

APPLICANT

and

**THE MINISTER FOR THE DEPARTMENT OF WATER
AND SANITATION SERVICES**

FIRST RESPONDENT

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

JUDGMENT

VAN DER SCHYFF J

Introduction

[1] This is an application for summary judgment. The parties are referred to as plaintiff and defendant.

[2] The plaintiff (Batlhokomedi) claims R1,482,546.16 representing unpaid PSIRA price escalations for security services rendered under a written contract concluded on 17 August 2017. The original 24-month contract was allegedly extended by oral agreement seven times, ultimately running until 30 August 2022. The plaintiff claims that the defendant paid for services including escalation up to February 2022, but failed to pay the PSIRA escalations for the period March 2022 to August 2022.

Common cause issues

[3] It is common cause between the parties that a written agreement for the provision of security services was concluded on 17 August 2017 between the plaintiff and the defendant. Both parties accept that the basic contractual terms were the contract price of R54,250,256.40; that invoices would be issued monthly; that invoices would be payable within 30 days; that the contract was for the North West Regional Office; that PSIRA escalations would apply, and that the initial contract period was 1 August 2017 to 30 July 2019.

[4] It is also common cause that the defendant made partial payments to the plaintiff for the period March 2022- August 2022. The defendant paid the base invoice amounts but failed to pay the escalations despite having consistently paid the escalations together with the base invoice amounts for the period prior to March 2022.

Areas of dispute

[5] A reading of the papers reveals seven distinct areas of dispute, some procedural and some substantive. Since the issues were raised by the defendant, the defendant's position is set out first, followed by the plaintiff's position. Since no replying affidavit is filed in summary judgment proceedings, the plaintiff's position was extrapolated from the founding affidavit.

[6] The first issue raised by the defendant is procedural: the defendant takes issue with the plaintiff's use of Form 2 instead of Form 2(a) when instituting summary judgment proceedings. The defendant contends this is a fatal procedural defect that renders the

application bad in law, because the use of Form 2 prejudices the defendant from properly filing opposing papers and prejudices its defence.

[7] The second issue is procedural. The defendant contends that summary judgment is only competent where the defendant's plea does not disclose a defence. The defendant submits that its plea clearly and concisely pleads several defences. Since a proper defence has been disclosed, the application for summary judgment constitutes an abuse of court process.

[8] The third issue has procedural and substantive elements. The defendant claims that Rule 32(1) of the Uniform Rules of Court limits summary judgment to claims based on a liquid document, for a liquidated amount of money, for the delivery of specified movable property, or for ejectment. The defendant contends that the plaintiff's claim is framed as one for specific performance of contract, which falls outside the permissible categories listed in Rule 32(1). Accordingly, the defendant contends, the application is bad in law and does not comply with the Rule. The plaintiff's position is that its claim is for payment of a specific, quantified sum arising from unpaid invoices, which is a liquidated amount of money squarely within rule 32(1). The characterisation as "specific performance" is merely a description of the contractual obligation being enforced.

[9] The fourth issue raised is that the plaintiff was required to serve a written notice of its intention to institute legal proceedings under section 3(1) of Act 40 of 2002, read with sections 3(1), 3(2) and 4(1)(b). No such notice was served. This, the plaintiff contends, is a complete bar to the proceedings. The plaintiff's position is that Act 40 of 2002 only applies to the recovery of a "debt", defined in section 1 of the Act as a debt arising from damages. Because the claim is for specific performance of payment obligations, Act 40 of 2002 does not apply. The special plea accordingly has no merit and raises no triable issue.

[10] The fifth issue raised is the defence of prescription. The defendant contends that the plaintiff's claim arose on 17 August 2017, on the date that the contract was concluded. The summons was only served on 20 March 2024, more than 3 years later. Accordingly, so contends the defendant, the claim has prescribed under the Prescription Act. The plaintiff's position is that while 17 August 2017 represents the date on which the contract was concluded, it is not the date the debt arose. The claim specifically relates to unpaid PSIRA

escalations for March 2022 to August 2022. Since invoices were issued between 20 and 22 September 2022 and payment was due 30 days thereafter, the earliest date the claim could have arisen is 20 October 2022.

[11] The sixth issue raised by the defendant is that of negligent and or fraudulent misrepresentation. The plaintiff alleges in its particulars of claim that the agreement came into force on 1 August 2017, yet the agreement was only signed on 17 August 2017. Thus, contends the defendant, it was practically impossible for a contract to be entered on 17 August 2022 to have come in force on 1 August 2017. The defendant pleads this constitutes a fraudulent and or negligent misrepresentation, which is a *bona fide* defence raising a triable issue. The plaintiff's position is that clause 3.1 of the agreement expressly states the agreement comes into effect on 1 August 2017. Stating a fact contained in the written agreement cannot be a misrepresentation. Furthermore, contends the plaintiff, there is no legal impediment to an agreement being concluded on a date later than its commencement date (i.e., contracts may have a retrospective or back-dated operative date). As a result, the argument does not raise a triable issue.

[12] The seventh issue raised by the defendant, is arguably the central substantive dispute. The plaintiff alleges the original 24-month contract was extended by seven oral agreements from July 2019 to August 2022. The defendant contests this on multiple grounds. The defendant contends the following:

- (a) The oral extensions are null and void because clause 19 of the agreement is an entire agreement clause (the contract constitutes the entire contract, and no other provision shall form part of it unless in writing and signed by both parties).
- (b) Clause 20 is a non-variation clause (no variation shall be valid unless in writing and signed by both parties).
- (c) Allowing oral extensions would offend the parol evidence rule.
- (d) There is no other written contract extending the agreement between the parties, and the defendant has no knowledge of any such extension. The defendant therefore cannot be held liable for R1,407,717.93 (or R1,482,546.16) on the basis of an unwritten agreement.

- (e) There are genuine disputes of fact about whether extensions occurred, by whom they were agreed, and where — these go to the very heart of the contract and cannot be resolved on the papers.
- (f) The plaintiff's particulars of claim do not sufficiently identify *who* concluded the oral extensions on behalf of each party or *where* they were concluded, making the pleading deficient.

[13] The plaintiff's position can be set out as follows:

- (a) Neither clause 19 nor clause 20 refers to *extensions* of the agreement; they address variations or modifications of existing provisions, not an extension of duration. An oral extension is not precluded by either clause.
- (b) In any event, the defendant is estopped from denying the validity of the extensions because: (i) the defendant never alleged the extensions did not occur, only that they are invalid; (ii) the defendant accepted and benefited from the plaintiff's services throughout the entire extension period (July 2019 to August 2022); (iii) the defendant paid for those services — including the PSIRA escalations — for the period prior to March 2022, thereby unequivocally accepting the validity of the extensions; (iv) the defendant cannot now approbate and reprobate.

[14] The defendant took issue with the estoppel argument. It contends that the estoppel argument was not pleaded in the plaintiff's particulars of claim and constitutes new evidence introduced for the first time in the founding affidavit. Relying on *Minister of Safety and Security v Slabbert* [2010] 2 All SA 474 (SCA), a party may not plead one case and seek to establish a different one at trial. The estoppel argument is inadmissible at this stage without an amendment to the particulars of claim.

Discussion

[15] It is well established that the purpose of summary judgment is to enable a plaintiff with an unanswerable case to obtain swift relief without the delay and expense attendant upon a trial. Conversely, where a defendant demonstrates a bona fide defence or raises a triable issue, the court will not shut the defendant out from defending the action.

[16] The defences raised by the defendant must therefore be considered in turn.

[17] The first procedural objection lacks merit. The defendant contends that the plaintiff's use of Form 2 instead of Form 2(a) renders the application fatally defective. That contention is misplaced. Summary judgment proceedings are governed specifically by Uniform Rule 32. Once a defendant has entered an appearance to defend and delivered a plea, the matter proceeds within the framework contemplated by Rule 32, and not as an ordinary opposed application under Rule 6.¹ The use of Form 2 did not occasion any prejudice to the defendant and does not invalidate the application.²

[18] The second procedural objection is equally without merit. The mere fact that a plea has been delivered does not, without more, establish the existence of a bona fide defence or a triable issue. A court is required to interrogate the substance of the defences raised and not merely their formal articulation.

[19] The third objection, namely that the plaintiff's claim falls outside the ambit of Rule 32 because it is characterised as one for "specific performance", cannot be sustained. The plaintiff seeks payment of a quantified and liquidated sum allegedly due under a contract. That the claim may simultaneously constitute enforcement of contractual obligations does not deprive it of its character as a claim for a liquidated amount in money as contemplated in Rule 32(1).

[20] The fourth issue concerns the applicability of the Institution of Legal Proceedings Against Certain Organs of the State Act 40 of 2002. The Supreme Court of Appeal held in *Vhembe District Municipality v Stewarts And Lloyds Trading (Booysens) (Pty) Ltd*³ that the term "debt" as contemplated in the Act is confined to claims sounding in damages. The plaintiff's claim is not one for damages, but for payment allegedly due in terms of a contract. The Act finds no application, and the special plea does not raise a triable issue.

¹ *Grayson Plant Hire (Pty) Ltd v Kimber Construction (Pty) Ltd* 1970 (2) SA 565 (E) at 567B-H.

² See SJ Van Niekerk *et al* Summary Judgments – A Practical Guide, Lexis Library, April 2026 SI 25 at 5.5 with reference to *WM Mentz & seuns (Edms) Bpk v Katzake* 1969 (3) SA 306 (T) at 311E-F.

³ [2014] 3 All SA 675 (SCA) (26 June 2014) at paras 11 and 12.

[21] The prescription defence is similarly unsustainable. The defendant incorrectly conflates the date of conclusion of the agreement with the date upon which the debt became due. Although the agreement was concluded on 17 August 2017, the plaintiff's claim relates specifically to unpaid PSIRA escalations for the period March 2022 to August 2022. The relevant invoices were issued during September 2022 and became payable 30 days thereafter. The earliest date upon which prescription could have commenced running was therefore October 2022. Summons was served well within the applicable three-year period.

[22] The sixth defence, framed as one of negligent and/or fraudulent misrepresentation, is likewise devoid of merit. Clause 3.1 of the written agreement expressly provides that the contract would come into operation on 1 August 2017 notwithstanding the later signature date. The plaintiff's reliance upon the express wording of the agreement cannot constitute a misrepresentation. There is moreover no legal impediment to parties agreeing that a contract will operate retrospectively. The reliance placed on the discrepancy between the operative date and signature date accordingly raises no triable issue. *Jubi Properties (Pty) Ltd v Boyce*⁴ is authority for the view that a valid contract may be concluded despite backdating, and that the backdating of an agreement is perfectly acceptable in commercial dealings between parties. The issue at hand does not relate to suspensive conditions, bypass compliance deadline or impact on third parties' rights.

[23] The remaining issue concerns the plaintiff's allegation that the parties orally extended the agreement on seven occasions after expiry of the initial 24-month term on 30 July 2019. The written agreement contains both an entire agreement clause and a non-variation clause in the following terms:

"This Contract constitutes the entire Contract, and no other Contract, provision, document, or determination shall form part of this Contract unless such other Contract, provision, document, or determination is in writing and has been signed by both Parties.

No variation or modification of any provision of this Contract or consent to deviate therefrom shall be valid, unless such variation or modification is in writing and has

⁴ (12286/2016) [2016] ZAGPJHC 338 (7 December 2016) at para 8.

been signed by both Parties, and such variation, modification, or consent shall be valid only for a specific case and only for the purpose for which an extent to which it was made or given”.

[24] In considering this issue, I have taken into account that the defendant continued to accept and benefit from the plaintiff's services after expiry of the original term, and continued to make payment therefor, including payment of PSIRA escalations, during the alleged extension periods. The defendant only ceased paying the escalated component of the invoices during the final period from March 2022 to August 2022.

[25] I have also considered the further argument advanced by the plaintiff, namely the contention that clauses 19 and 20 of the agreement do not prohibit oral extensions of the agreement's duration, but only oral variations of its existing terms. The plaintiff submits that an extension of duration is not a "variation or modification of any provision" of the contract within the meaning of clause 20, but rather a new agreement about continuation, which neither clause expressly addresses.

[26] That distinction has some textual foundation. Clause 20 refers to "variation or modification of any provision of this Contract." It may be argued that the clause is directed at amendments to the substantive content of existing provisions — the price, the scope of services, the escalation mechanism — rather than an agreement to continue performing on those same terms for a further period. On that interpretation, a true extension, leaving all contractual terms intact and merely prolonging their operation, would fall outside the clause's reach. The plaintiff's argument nevertheless encounters a substantial difficulty. The duration of an agreement is itself a material contractual term. A clause stipulating a 24-month period terminating 30 July 2019 is as much a "provision" of the agreement than a clause governing price or performance. An oral agreement extending that period beyond 30 July 2019, therefore, modifies the term governing duration and is, on a proper analysis, a variation of an existing provision rather than something conceptually distinct from it.

[27] Whether clauses 19 and 20, properly interpreted in the context of this agreement, are sufficiently clear to encompass extensions of duration — or whether the parties themselves understood them in that sense — is, however, a question of contractual interpretation that cannot be resolved summarily on the affidavits before the court.

[28] In *HNR Properties CC and Another v Standard Bank of South Africa LTD*⁵ the Supreme Court of Appeal held that reliance upon waiver or estoppel cannot ordinarily be invoked to circumvent a non-variation clause. In *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren*,⁶ Steyn CJ, recognised that a non-variation clause might not prevent a party from relying on estoppel. The facts of the particular matter in question will be determinative of the issue. This is indicative of the existence of a triable issue.

[29] In the result result, the summary judgment cannot be granted and the application falls to be dismissed.

[30] This court must nevertheless record its disquiet at the manner in which the defendant opposed the application. Of the numerous defences advanced, only the issue concerning the alleged oral extensions raises a genuine triable issue. The remaining defences were either plainly unsustainable in law, unsupported by the facts, or opportunistically raised notwithstanding settled legal principles. Valuable judicial resources and court time were unnecessarily consumed in addressing issues that ought never to have been persisted in. While a litigant is fully entitled to resist summary judgment where a *bona fide* defence exists, that entitlement does not extend to the proliferation of contrived or untenable points lacking substantive merit.

[31] As for costs, I am of the view that since the trial court will be hearing evidence, or even perhaps a stated case, before deciding the matter, the trial court is the court that will be in the best position to determine whether the plaintiff was justified in approaching the court for summary judgment.

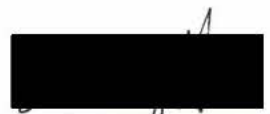
ORDER

In the result, the following order is granted:

- 1. The application for summary judgment is dismissed.**
- 2. Costs are costs in the cause.**

⁵ 2004 (4) SA 471 (SCA) at paras 19, 20 and 21.

⁶ 1964 (4) SA 760 (A) at 765C.



**E VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

For the applicant:
Instructed by:

Adv. NG Louw
ALBERT HIBBERT ATTORNEYS

For the respondent:
Instructed by:

Adv. NM Seleso
THE STATE ATTORNEY, PRETORIA

Date of the hearing:

13 May 2026

Date of judgment:

25 May 2026