IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Not Reportable

Appeal Case No.: CIVAPPMG33/2024

Court *a quo* Case No.: 38712020

In the matter between:

NILSEN STEENKAMP & INC	First Appellant
A NILSEN	Second Appellant
and	
ME COETZEE	Respondent

Coram: Wessels AJ et Maree AJ

Date of hearing: 14 November 2025

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 14h00 on 29 July 2026.

Summary: Advocate — fees — profession of advocate a referral profession — advocate not entitled to contract directly with member of public — advocate renders service on instructions of, and looks for payment to, instructing attorney and not client — absent express agreement, default position is that instructing attorney remains liable for advocate's fees — no implied term that client is liable. Appeal — attorney disputing liability for advocate's fees on ground that mandate did not include a fee provision — evidence and conduct of parties, including attorney's receipt and payment of trust funds and inclusion of advocate's fees in its own bill for taxation, establishing agreement, expressly, tacitly and by implication, that attorney was liable — appellants failing to discharge evidential burden of showing deviation from customary and proper procedure for briefing counsel. Held — appeal dismissed with costs

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JUDGMENT

Maree AJ

[1]. The matter before this Court concerns an appeal from the Magistrates' Court for the District of Matlosana held at Klerksdorp. The appeal was launched and prosecuted by the appellants (being the Defendants in the Court *a quo*) and is noted against the whole of the judgment and orders granted by the Learned Magistrate on 13 September 2024, whereby judgment was granted in favour of the respondent for payment of the amount of R133,895.40, mora interest, and costs (including costs of counsel).

[2]. The grounds for appeal as listed in the appellant's Notice of Appeal consist of 21 paragraphs, however, in the appellants' Heads of Argument the central issue on appeal has been narrowed down to whether the Respondent's mandate to act as counsel included a fee provision, in terms whereof the second appellant was liable for the respondent's fees, how that term was agreed upon and what the provision entail.

[3]. The Respondent's claim in the court of first instance is premised on an agreement of mandate entered into between the Respondent and the Appellants during March 2017. As pleaded, the express alternatively tacit further alternatively implied terms of the agreement of mandate was that (a) the Respondent would act as Counsel for and on behalf of the appellants' client, Mr Vermaak, rendering professional legal services in the private arbitration between Mr Vermaak and the Greater Taung Municipality ('the municipality'), (b) the respondent would act for Mr Vermaak on instructions by, and through the first appellant and the first appellant would be responsible for payment of the respondent's fair and reasonable fees, (c) the respondent would charge the appellants fair and reasonable fees on a scale as between attorney and own client for professional services rendered, (d) payment of the invoices rendered will become due and payable 90 days after date of rendering the same, and (e) the appellants would ensure that sufficient funds would be available to make payment of the respondent's invoices. It is the respondent's case that the Respondent rendered service to the Appellants to the total amount of R190,281.00. Part thereof, R23,365.60, had been paid before the conclusion of the arbitration proceedings. The arbitration proceedings were successfully concluded in favour of Mr Vermaak, who was awarded a costs order in his favour. The costs of the arbitration were taxed and an amount of R157,261.00 allocated for the respondent's fees after an amount of R36,019.00 was taxed off. After taxation, the costs were paid by the municipality to the first appellant, who, upon receipt

thereof, paid the taxed costs to Mr Vermaak. The respondent's fees remained unpaid, following which the respondent instituted action against the appellants. For purposes of her action, the respondent limited her fee to R157,261.00 (being the amount allowed on taxation) less the amount of R23,365.60 that was paid before the conclusion of the arbitration proceedings, totalling the amount of R133,895.40.

[4]. The appellants' pleaded case to the respondent's claim comprises a denial of an agreement between the appellants and the respondent, more specifically, the appellants deny that the respondent was instructed to act as Counsel for and on behalf of Mr Vermaak by the appellants. The appellants pleaded that the customary and proper procedures relating to the appointment of Counsel by an attorney were grossly neglected in that the appellants were to assist Mr Vermaak as a so-called postbox and receive funds from Mr Vermaak for payment to the respondent on behalf of Mr Vermaak. The fee agreement with the respondent was entered into between the respondent, Mr Vermaak and Mr Dippenaar (a labour consultant and the father of the Respondent), and the appellants had no agreement with the respondent whatsoever. In addition to the aforesaid, the appellants contend that the invoices rendered by the respondent do not reflect the fair and reasonable fees to which the respondent was entitled in that they were inflated for purposes of taxation. The Appellants admit receiving the taxed costs of the arbitration proceedings and paying the same to Mr Vermaak.

[5]. The matter proceeded to trial and, on 13 September 2024, judgment was granted in favour of the respondent as stated above. Aggrieved by the judgment, the appellants appealed to this Court. The issues on appeal are limited; i.e. whether the respondent's mandate to act as counsel included a fee provision, in terms whereof the second appellant was liable for the respondent's fees, how that term was agreed upon and what the provision entails. It is, therefore, convenient

first to set out the relevant legal framework, then to consider the evidence and the appellant's contentions, and finally to determine whether the appeal should succeed.

[6]. The advocacy profession is a referral profession, and an advocate cannot contract directly with members of the public[1]. An advocate accepts instructions from an attorney on behalf of a client[2]. An advocate renders services on behalf of the attorney's client at the instructions of the attorney and not the client[3]. The legal nexus between an advocate and their fees is the attorney and not the member of the public[4]; the agreement between an attorney and counsel bestows the obligation for payment of counsel fees on the attorney[5]. An advocate who accepts a brief is accordingly required to look to the instructing attorney, rather than the client, for payment of fees[6]. It is a matter of good practice that attorneys are sufficiently covered for costs when they instruct an advocate[7]. If they are not, they risk paying counsel fees. In general, counsel is not allowed to receive instructions or payment directly from a client[8]. Where no express agreement is entered into between an advocate and an attorney concerning fees, the default

1 *Fluxmans Incorporated v Lithos Corporation of South Africa (Pty) Ltd and Another (No 2)* 2015(2) SA 322 (GJ) at para 26.

2 *Society of Advocates of Natal v De Freitas* 1997(4) SA 1134 (N); *General Council of the Bar of South Africa v Van der Spuy* 1999(1) SA 577 (T); *De Freitas and Another v Society of Advocates of Natal* 2001(3) SA 750 (SCA).

3 *Leysath v Legal Practitioners Fidelity Fund Board of Control* (51027/19) [2021] ZAGPPHC 7 (14 January 2021) at para 11; see also General Council of the Bar of South Africa v Geach and Others 2013 (2) SA 52 (SCA) 144.

4 *Fluxmans Incorporated v Lithos Corporation of South Africa (Pty) Ltd and Another (No 2)* 2015(2) SA 322 (GJ) at para [26]; *General Counsel of Bar of South Africa v Geach and Others* 2013(2) SA 52 (SCA); *Minister of Finance and Another v Law Society, Transvaal* 1991(4) SA 544 (A); *Serrurier and Another v Korzia and Another* 2010(3) SA 166 (W).

5 *Liebel v Road Accident Fund and Others* (40882/2020) [2021] ZAGPPHC 411 (17 May 2021) at para 21.

6 *Ramesh Luckychund & Associates v Sewpal* (AR441/2019) [2020] ZAKZPHC 37 (19 June 2020) at para 8.

7 *Ramesh Luckychund & Associates v Sewpal supra.*

8 *Serrurier and Another v Korzia and Another supra*; see also *General Council of the Bar of South Africa v Van der Spuy* (*supra*); and *De Freytas and Another v Society of Advocates of Natal and Another* 2001(3) SA 750 (SCA). In the *Serrurier* matter, Jordaan AJ, referring to the cases mentioned before, stated: 'These two cases illustrate that an Advocate will be suspended from practice even if he is not subject to rules of the General Bar Council and even if the Constitution of his own professional body allows receiving instructions and payments from members of the public.'

position remains in place, being that the attorney is liable for payment of the advocate's fees; to put it differently, there can never be an implied term of mandate that the client will be liable for the advocate’s fees[9]. An advocate is therefore not permitted to agree that his fees be paid by anyone other than his attorney[10].

[7]. As set out hereinbefore, the appellants initially denied that the first appellant acted as the instructing attorney for Mr Vermaak. During the hearing of the matter in the court of first instance, it was put out of contention that the first appellant did act as attorney of record for Mr Vermaak in the arbitration matter. The main contention by the appellants therefore concerns the respondent’s mandate, more specifically, as put by the appellants, that the Respondent’s mandate to act as Counsel did not include a provision in terms whereof the appellants and the respondent agreed that the appellants would be liable for the respondent’s fees.

[8]. The respondent’s summarised evidence in this regard was that she agreed with the second appellant that concerning the arbitration matter, (a) the first appellant would pay her an initial fee of R23 365.60 (this amount comprised part payment for the arbitration, for drafting of heads of argument and travelling expenses), (b) the remainder of her fees would be invoiced for and paid by the first appellant after the conclusion of the arbitration proceedings on a scale as between attorney and own client, and (c) that the fees had to be taxed.

[9]. The evidence of the second appellant was that no agreement whatsoever was reached between the first appellant and the respondent. According to the second appellant, Mr Vermaak was Mr Dippenaar’s client (the labour consultant),

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[9] *Serrurier* supra

[10] *Serrurier* supra

and Mr Dippenaar instructed the appellants. The first appellant was merely a 'conduit for payment' and a 'postbox'. Mr Dippenaar would request Mr Vermaak to make payment to the first appellant and then instruct the first appellant to make payment of the funds received as required.

[10]. The appellants relied heavily on the respondent's evidence that it was an express term of the agreement between her and the second appellant that she would be paid attorney-and-own-client fees after submitting her account and once the arbitration had been finalised. The appellants contended that, firstly, the said evidence contradicted the respondent's pleadings and secondly that the fee provision on which the respondent relied in her evidence amounted to an "expressly oral agreement upon a certain date and place". As to the first contention, I find that even though the evidence of the respondent differed in that aspect from the facts as pleaded, the matter was fully canvassed during the hearing and warranted to be decided between the parties[11]. As to the second contention, I disagree with the appellants' view. The respondent's evidence on the payment terms concerned the terms of the agreement and not a new agreement between the parties.

[11]. What is evident from a reading of the record is that from the evidence of the respondent, the second appellant, Mr Dippenaar and Mr Vermaak, there can be no doubt that the respondent was appointed by the first appellant to act as counsel on behalf of Mr Vermaak.

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11 *British Diesels Ltd v Jeram and Sons* 1958 (3) SA 605 (N) *Desai v NBS Bank Ltd* 1998 (3) SA 245 (N); *Collen v Rietfontein Engineering Works* 1948 (1) SA 413 (A) at 433 'This Court, therefore, has before it all the materials on which it can form an opinion, and this being the position it would be idle for it not to determine the real issue which emerged during the course of the trial.' *Sentrachem Bpk v Wenhold* 1995 (1) SA 312 (A).

[12]. Premised on the legal position set out above, I am of the view that the general position is that attorneys are liable for payment of advocates' fees. Even if I am wrong in that conclusion, the appellants failed to show that the agreement with the respondent did not comply with the 'customary and proper procedure' as pleaded. I say so because, by implicitly accepting, in the pleadings, a 'customary and proper' procedure to brief and advocate, the Appellants have the evidential burden to show a deviation from that procedure. Having regard to the conspectus of evidence before this court, I am of the view, for the reasons set out below, that the Appellants failed to discharge that burden.

[13]. The respondent showed that an agreement was reached, expressly, tacitly and by implication, that the first appellant acted as instructing attorney for the respondent and that the first appellant would be liable for payment of the respondent's fees. This agreement stems not only from the legal position referred to above, but also from the evidence of the respondent, Mr Dippenaar, and the conduct of the parties. I find the respondent's evidence compelling insofar as she testified that the express terms of the agreement were that the appellants would be liable for payment of her fees. The undisputed evidence of Mr Dippenaar, which contradicted the appellants' pleaded case, supports the respondent's evidence. The conduct of the parties also supports the terms of the mandate in that: (a) the first appellant not only received monies from Mr Vermaak on trust, but also paid monies from its trust account to the respondent. Evidently, the Appellants were aware that an advocate cannot be instructed directly, or paid directly by, a member of the public; (b) the first appellant received the respondent's accounts and caused them to be sent to the costs consultant for inclusion in the first appellant's fees and disbursements account presented for taxation, which shows that the appellants were aware that the Respondent would invoice the first appellant for payment; and (c) under items 10, 48, and 72 of the taxed bill of costs, which concerns the Respondents' invoices, fees are claimed

on behalf of the first appellant for attendance, peruse and payment to, the respondent. The first appellant also allowed the respondent's fees to be taxed. If the appellants had considered that the respondent should be paid directly by Mr Vermaak, they would not have included fees for attending, perusing and paying the respondent's fees. As to the second appellant's evidence, I am not impressed by the view of his conduct as an attorney and of his duties towards Mr Vermaak and the respondent. The appellants' pleaded case was that the first appellant acted as a mere postbox. During the hearing, it was conceded that the first appellant acted as the instructing attorney for Mr Vermaak and the respondent. The second appellant's evidence, however, portrays an attorney who, after practising for 22 years, adopted a nonchalant approach to his legal and fiduciary duties towards Mr Vermaak and the Respondent. I find this evidence of the second appellant improbable because the second appellant's conduct, referred to above, shows that he was aware of the duty of an attorney and the general position that an advocate receives instructions and payment from an attorney and not directly from the client.

[14]. This leaves this Court to consider three additional aspects relied on by the appellants. The first being the allegation that the respondent inflated her fees. I need say no more than that the appellants accepted the respondent's invoices and presented the same for taxation. The second is the alleged contingency fee agreement. I find no evidence supporting such an agreement and the appellants' reliance on this issue is misplaced. The third concerns the application of the Code of Conduct published under the Legal Practice Act[12]. The said Code of Conduct came into effect on 29 March 2019, approximately two years after the conclusion of the mandate between the first appellant and the respondent. The Code of Conduct has no retrospective effect; it is irrelevant for present purposes.

[12] Legal Practice Act 28 of 2014.

[15]. In the premises, I find that the appeal stands to be dismissed.

Order

The appeal is dismissed with costs, including costs of counsel on scale C.

[redacted]

G V MAREE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

I agree

[redacted]

M WESSELS
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

APPEARANCES:

FOR THE APPELLANTS:	Adv Le Grange
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	C/O Bruce Loxton Attorneys
	Mahikeng
FOR RESPONDENT:	Adv Grundlingh
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