IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2025-139546

(1) Not reportable
(2) Not of interest to other judges

Date: 3 August 2026

In the matter between

J[...] N[...] Plaintiff

and

J[…] L[...] Defendant

Order

---

1. The application for summary judgment is dismissed.

2. The Defendant is granted leave to defend.

3. The Plaintiff is ordered to pay the Defendant's costs of the application for summary judgment on the attorney and client scale, including costs of counsel.

4. The action is stayed until the Plaintiff pays the costs referred to in paragraph 3.

Judgment

J Mitchell AJ

[1] J[...] N[...] and J[…] L[...] disagree about who pays for their children's university tuition and living expenses. He says he wanted the best for his children but never agreed to anything. She says he agreed to pay just about everything. Summary judgment is not the right way to solve the he-said-she-said.

[2] Mrs N[...][1] and Mr L[...] used to be married. They divorced about a decade ago. They have two children. H[...] is 27. N[...] is 25. Mrs N[...] alleges that between 2018 and 2025, she and Mr L[...] concluded "a number of partly written/partly oral agreements"—already a shaky start for summary judgment—about H[...]'s and N[...] "education and maintenance". H[...] studied in the UK, first at the University of St Andrews and later at the University of Manchester. N[...] studied at UCT and then followed his sister to the UK for a Masters at BPP University in London.

[3] Mrs N[...] alleges four main "express, alternatively implied further alternatively tacit" terms of the agreements. The first term is that Mr L[...] would pay H[...]'s tuition at St Andrews and Manchester and "100% of all H[...]'s monthly maintenance requirements" while she studied in the UK. The second term is similar for N[...] tuition at UCT and at BPP—that Mr L[...]

[1] I use "Mrs" for Mrs Nowitz in line with her preference, and I use Hannah's and Noah's first names for convenience and without intending any disrespect.

would pay “100% of all N[...] monthly maintenance requirements” while he studied at UCT, and “50% of all N[...] monthly maintenance requirements” while he studied in the UK. The third term is that H[...]’s and N[...] tuition “would be paid timeously to the respective universities from time to time in accordance with the due dates for the payment of their respective fees”. And the fourth term is that H[...]’s and N[...] maintenance requirements “would be paid on or before the first day … of each month commencing from 1 August 2019 for H[...] and commencing from 1 January 2020 for N[...].”

[4] Mrs N[...] alleges that H[...] and N[...] went to university “[p]ursuant to” the agreements with Mr L[...] and that Mr L[...] “confirm[ed] his agreement to pay their respective university fees”. To substantiate that confirmation, Mrs N[...] refers to, and attaches to her particulars of claim, a letter from Mr L[...] to St Andrews from 2021, emails between Mr L[...] and Nedbank from 2018 about his overdraft, and a fee declaration for UCT that Mr L[...] signed with N[...] in 2019.

[5] Mr L[...]’s letter to St Andrews in 2021 is an application “for assistance to the international student discretionary fund”, asking for a “reduction in H[...]’s fees.” Mr L[...] acknowledged that “[a]s H[...]’s father” he is “responsible for her fees”. He explained that his earnings “declined quite radically” and he proposed to pay “20% of H[...]’s fees on or before 30 August 2021”, a “further 10% in March 2022”, and a “further 10% in June 2022”. He could not give a “guaranteed undertaking” and reported having “no other funds or access to funds to pay H[...]’s full tuition fees.” He noted, however, that he had been able to “fund H[...]’s living expenses”.

[6] Mr L[...]’s emails with Nedbank in 2018 show his failed attempt to stave off a reduction to his overdraft. As part of that effort, he explained to Nedbank that he was “experiencing tight cash flow issues” because he had to pay N[...] school fees—at the time, N[...] was still in high school—and H[...]’s university fees.

[7] Near the end of 2019, N[...] and Mr L[...] signed a “declaration by applicant and parent/legal guardian” for UCT. In the standard-form declaration, N[...] acknowledges that he is responsible for his fees. Mr L[...] also signed, agreeing that he is “jointly and severally liable” with N[...] as “co-debtor” for N[...] fees.

[8] Mrs N[...] alleges that Mr L[...] breached their agreements “necessitating [Mrs N[...]] advancing the necessary funds on his behalf, to meet such commitments timeously.” Mrs N[...] attaches to her particulars of claim a schedule she prepared showing, so she alleges, the “agreed amounts” that Mr L[...] did not pay “either timeously or at all”. The schedule runs from August 2022 to August 2025. It lists expenses like tuition, rent, forex charges, allowances, medical aid, and subscriptions for cell phones and gyms. It has a running tally for each month for H[...] and for N[...], and then a column adding up Mr L[...]’s payments to Mrs N[...] (under the column “payment JAL”). The schedule ends with a total for “H[...] & N[...] expenses” of

R8 940 965.35, a total for Mr L[...]’s payments of R2 711 590, and the “total balance”—and what Mrs N[...] now sues for—of R6 229 375.35. Mrs N[...] alleges that Mr L[...] is obliged to “reimburse” her for “such monies lent and advanced.” The first and last few lines of the schedule look like this:

[9] Mrs N[...] doesn’t back up her schedule with any supporting invoices or documents (though she argues Mr L[...] already has them).

[10] Mrs N[...] also attaches to her particulars of claim 25 pages of some of the WhatsApps between her and Mr L[...] between 2018 and 2025. A typical example of the WhatsApps looks like this:

[11] Mrs N[...] alleges that the WhatsApps are “[w]ritten examples” of Mr L[...] “acknowledg[ing] both verbally and in writing his alleged inability” to comply with their agreements (Mrs N[...] also points to the letter to St Andrews, the emails with Nedbank, and the UCT fee declaration as further examples). Mrs N[...] also relies on the WhatsApps and those other documents to show that she was “forced to follow the path of least resistance” by “receiving lesser payments” from Mr L[...] than what she alleges he owes, but she pleads that she never “waived any of her rights to recover monies lent and advanced by her on his behalf.”

[12] In his plea, Mr L[...] denies the agreements. He pleads that he and Mrs N[...] concluded a settlement as part of their divorce. In the settlement (which is attached to the plea) Mr L[...] agreed, amongst other things, to pay for H[...]'s and N[...] "reasonable education" including "school fees", but subject to a proviso in the settlement that he "is in a financial position to do so" (at the time, H[...] and N[...] were still minors). There doesn't seem to be any dispute that Mr L[...] paid H[...]'s and N[...] school fees, but the relevance of that isn't clear because Mrs N[...] relies on, and pleads, agreements about university fees and related expenses concluded long after the settlement.

[13] As for the agreements, Mr L[...] denies "reach[ing] any agreement" with Mrs N[...] about H[...] and N[...] "after their attainment of the age of majority" and after they finished school. He pleads that he "volunteered that he would, to the best of his ability, assist with the costs of their tertiary education and living expenses during the period of their tertiary education." He "denies any agreement" with Mrs N[...] about "the amounts of money that would be payable by [him] towards the children's tertiary studies" or about "the specific items in relation to the children's living expenses (during the period of their tertiary education) towards which [he] would contribute." He reiterates in his plea that although he "was (and remains) … willing and desirous to contribute towards the costs of the children's tertiary education and their reasonable living expenses", this is "not pursuant to any agreement" with Mrs N[...] "but of his own volition, and subject always to his financial ability to do so." He denies the pleaded terms of the agreements on that basis. He also denies that he is "in the financial position … to pay, in full, in respect of the children's tertiary education and monthly maintenance".

[14] Mr L[...] denies that the letter to St Andrews, the emails with Nedbank, and the UCT fee declaration are evidence of any agreements between him and Mrs N[...]. To the contrary, says Mr L[...]: those documents all show that "any payments and/or contributions made by him towards the children's tertiary education and living expenses were made of his own volition and not in consequence of any agreement with [Mrs N[...]]."

[15] As for Mrs N[...]'s schedule, Mr L[...] pleads that he did not approve "[v]arious" expenses listed in the schedule "on account of them being excessive, unnecessary and unaffordable", making them gifts from Mrs N[...] to H[...] and N[...] that she now tries to "recover from [Mr L[...]], absent any agreement or consent". Mr L[...] also argues that the schedule "does not correctly reflect all the amounts" he "actually and voluntarily paid" between 2022 and 2025.

[16] Mr L[...] denies that the WhatsApps show any agreements between him and Mrs N[...]. He argues they show that he paid when "affordable to him" and that he made "all efforts to make additional payments—despite not being required to do so".

[17] Mrs N[...] applies for summary judgment, claiming payment of the R6 229 375.35 reflected in her schedule. In her affidavit, Mrs N[...] refers to the letter to St Andrews, the emails with Nedbank, the UCT fee declaration, and the WhatsApps as "confirming his agreement to pay the respective University fees".

[18] Mrs N[...]'s description of the agreements shifts somewhat in her affidavit. In her particulars of claim, she pleads agreements between her and Mr L[...]

"relating to the education and maintenance of H[...] and N[...]". But in her affidavit, Mrs N[...] seems to expand the agreements to include "firm commitment[s]" to H[...] and N[...] directly (presumably in addition to the agreements between their parents). Elsewhere in her affidavit, Mrs N[...] alleges that Mr L[...] "agreed and committed fully to H[...] and [her]", which again seems to be a different (or at least an expanded) version of the agreements pleaded in the particulars of claim (and not, or at least not only, an agreement between Mrs N[...] and Mr L[...], but also an agreement between him and H[...]).

[19] Mrs N[...] also points out in her affidavit what the WhatsApps do not show: on her reading, nowhere in the WhatsApps does Mr L[...] deny an obligation to pay. Moreover, says Mrs N[...], some of the WhatsApps show Mr L[...] "reassur[ing] H[...] that her University fees will be paid in full by him."

[20] Mrs N[...]'s affidavit includes confirmatory affidavits from H[...] and N[...]. In their affidavits, H[...] and N[...] confirm that they read the particulars of claim, the plea, and Mrs N[...]'s affidavit, and they "confirm the correctness thereof is so far as same pertains to [them]." In his affidavit opposing summary judgment, Mr L[...] "expresses … dismay and disappointment" in Mrs N[...] for "involving [H[...] and N[...]]" in the dispute. Mr L[...]'s "dismay and disappointment" is a touch paternalistic. Yes, courts generally frown on parents conscripting their children to take sides: see generally *Z v Z* 2022 (5) SA 451 (SCA) at para 17. But H[...] and N[...] are adults. They have their own voices. Courts—and parents—should respect that.

[21] Nonetheless, H[...]'s and N[...] affidavits probably do not have much probative value for whether the claim is liquidated and for whether Mr L[...] has a bona fide defence. On the first point, Mrs N[...] argues that their affidavits "confir[m] the correctness of … the amounts which [Mr L[...]] owes [Mrs N[...]]", but neither H[...] nor N[...] offers anything more on that besides "confirm[ing] the correctness" of the particulars of claim and Mrs N[...]'s affidavit. On the second point, I do not take Mrs N[...] to argue that H[...] and N[...] witnessed the agreements. At this stage, the most I can take from H[...]'s and N[...] affidavits is that Mr L[...] promised to support them. I am less persuaded, at least on summary judgment, that their affidavits support the agreements that Mrs N[...] sues on.

[22] Mrs N[...] then turns to Mr L[...]'s pleaded defences. She clarifies that her claim has nothing to do with the divorce settlement (she denies that Mr L[...] paid all N[...] school fees, but that allegation doesn't seem relevant to Mrs N[...]'s claim based on her own description of the settlement as "completely irrelevant" to the agreements). She goes on to describe his denial of the agreements as a "blatant lie" and as showing his "mala fides … in trying to intentionally mislead the Court".

[23] Pause here. On a human level, it's probably expected—maybe even understandable—to see exes lob these serious allegations against each other (and Mr L[...] lobs them right back in his affidavit). But all these adverbs and adjectives seldom impress courts and seldom help judges apply law to facts; there is, after all, not much a judge in motion court can do when each side says the other is telling a big bag of lies. That's why we invented adversarial trials and cross-examination, see *Van Huyssteen NNO v Minister*

of Environmental Affairs and Tourism 1996 (1) SA 283 (C) at 306E-J ("…there is no better way of getting at the truth than through a hearing where the witnesses who hold and espouse opposing views can testify under oath and in public and where they are subject to interrogation").

[24] The temperature of the affidavits aside, Mrs N[...] argues that the evidence attached to the particulars of claim shows that they "obviously" concluded the agreements because, so the argument goes, there is no other explanation for Mr L[...] "conclud[ing] agreements with the respective Universities to effect payment." The "firm commitment" he made to the universities (or at least to UCT as a co-debtor with N[...]) entails "a firm commitment" to her (and to H[...] and N[...]) that he would pay all their tuition. She also argues that he "took no issue with the [a]greements" in the WhatsApps, and that a settlement he proposed in 2025 must mean there were agreements (because what else was he trying to settle). Mrs N[...] denies that the agreements came with a rider that Mr L[...] would pay only if he could, pointing out, with some intuitive appeal, that H[...] and N[...] could not have gone to university on an "if and maybe basis".

[25] In his opposing affidavit, Mr L[...] denies any agreement with Mrs N[...]. He explains that he has "contributed" to H[...]'s and N[...] tuition and living expenses "out of love for [his] children", not because of any agreement with Mrs N[...]. He argues that his only legal duty is his parental duty of support to H[...] and N[...] (which Mrs N[...] does not have standing to enforce—although lack of standing is not squarely pleaded in the plea). And he argues that Mrs N[...]'s payments to (or for) H[...] and N[...] were not loans to him.

[26] Mr L[...] argues that Mrs N[...]'s claim is not for a liquidated amount of money, and so she trips at the first hurdle for summary judgment. Her schedule is not liquidated, he argues, because the hundreds of line items on the schedule are not agreed and ascertaining the amount of the claim is "not a matter of simple calculation", especially because there are no supporting documents attached to the particulars of claim or to her affidavit.

[27] Mr L[...] says Mrs N[...] is "dishonest" in the way she distances her claim from the divorce settlement (he later alleges that she is "intentionally dishonest", but don't ask me the difference between dishonesty and intentional dishonesty). He refers to several WhatsApps between 2022 and 2025 that she did not include in the extracts attached to the particulars of claim. In them, she seems to tie his liability (and her claim against him) to the divorce settlement. My difficulty about what to do about her allegations of dishonesty against him applies just the same to his against her. It's never a good look when litigants leave out the bad parts of their version, especially when they put up carefully curated exchanges of correspondence. But the adversarial process lets litigants decide how to present their case. So Mr L[...]'s complaint that Mrs N[...] "selectively compiled and cherrypicked" the WhatsApps attached to her particulars of claim doesn't really land. Of course she was "selectiv[e]" and of course she "cherrypicked". How else is she meant to plead and prove her case? To be sure, the adversarial process means Mrs N[...] might end up looking bad, and she might be made to sweat in cross-examination, for leaving out the WhatsApps that undermine her case (which is why anticipating the blow is almost always the better way to persuade). But that's the stuff of trial strategy, not dishonesty (and, for

reasons already mentioned, definitely not dishonesty that I can somehow decide on summary judgment).

[28] Mr L[...] denies that the WhatsApps attached to the particulars of claim prove the pleaded agreements. He argues that the WhatsApps show the opposite: that Mrs N[...] also undertook to contribute to H[...]'s and N[...] tuition and living expenses.

[29] Mr L[...] deals with his and Mrs N[...]'s financial positions at some length in his affidavit. The upshot is that he denies he's a multimillionaire and argues that she is "in a far better financial position". I'm not sure where these lifestyle audits go: if Mrs N[...] is right that he agreed to pay, then he must pay (and his impecuniosity is relevant only if the sheriff arrives).

[30] Ms Andrews appeared for Mrs N[...], and Ms Milovanovic-Bitter for Mr L[...]. Their written and oral advocacy was of the highest standard.

[31] As I see it, there are two main points for now: whether Mrs N[...]'s claim is liquidated and whether Mr L[...]'s denial of the agreements is a bona fide defence.

[32] Even assuming that the claim is liquidated, Mr L[...] has a bona fide defence. All he needs to do to win this round is fully disclose the nature and grounds of his defence and its material facts, and show that on those facts, he has a bona fide defence: *Maharaj v Barclays National Bank Limited* 1976 (1) SA 418 (A) at 426B-C. Courts sometimes use shorthand for that test, asking if there is a "triable issue" (*Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) at para 32), a defence that's "not

inherently and seriously unconvincing" (*Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 228B-C) or the flip side, if the plaintiff's case is "unanswerable" (*Jili v FirstRand Bank Ltd* 2015 (3) SA 586 (SCA) at para 13). Summary judgment is not the time to test a defence on the probabilities (*Maharaj*, above, at 426A-B), nor the time to decide who is telling the truth (*Breitenbach*, above, at 228A-B).

[33] Mr L[...] denies the agreements. He fully discloses the nature and grounds of that defence, and the material facts on which it is based. The nature of the defence is a denial of the agreements that are the basis for Mrs N[...]'s claim. The ground of the defence is simple: he says he did not agree to pay all H[...]'s and N[...] tuition, all H[...]'s maintenance, and N[...] maintenance (all his maintenance while he was in Cape Town, and half while he was in London). On those facts, he has a good defence because if he is right that there are no agreements, then Mrs N[...]'s claim on the agreements fails.

[34] Mrs N[...] counters that conclusion with Mr L[...]'s letter to St Andrews, the UCT fee declaration, the WhatsApps, and Mr L[...]'s payments.

[35] Recall that Mrs N[...]'s pleaded case is that the agreements are "partly written/partly oral". The slash between partly written and partly oral is a familiar safe harbour for the pleader facing choppy evidentiary waters. Mrs N[...] does not say in her particulars of claim or in her affidavit when the "oral" parts of the agreements were concluded. The closest she comes is to describe the WhatsApps as "evidence" of "oral agreements". But I have read and re-read (and re-re-read) the WhatsApps. They just do not say what Mrs N[...] needs them to say to win on summary judgment.

[36] A trial court might draw some reasonable inferences from the WhatsApps. Ms Andrews argued that the WhatsApps are telling in their silence: in particular, Mr L[...] doesn't, at least not in the WhatsApps, deny the agreements and doesn't quibble with the amounts that Mrs N[...] asked for. In her heads of argument and during the hearing, Ms Andrews asked several rhetorical questions about why, if there really were no agreements, Mr L[...] and Mrs N[...] did and said what they did and said, and why they did not do and did not say what they did not do and did not say. Take just one powerful example. Would they really have watched on as H[...] and N[...] signed up to expensive universities in expensive cities without a firm plan to pay? I do not know the answer, but I do know that summary judgment is not the right way to find out. The answer could be that Mrs N[...] is right: Mr L[...] agreed to pay. But Mr L[...] pleads a possible answer: he did not agree to anything, but he paid for his children's universities and living expenses when he could afford it because he wants the best for his children. Ms Andrews argued that it is implausible that Mr L[...] took this kind of if-and-when approach to paying for H[...]'s and N[...] tuition. Putting your children through university on a wing and a prayer may not be perfect parenting, but no parents are perfect and I cannot, at this stage, dismiss Mr L[...]'s version as inherently and seriously unconvincing and raising no triable issue.

[37] Ms Andrews produced a helpful "schedule of evidence", including "WhatsApp evidence of agreement". The schedule deserves serious consideration, so I reproduce it on the next few pages (in grey) with an added column with my assessment (limited to the WhatsApps for now):

<table>
<tr><th colspan="2">SECTION A – H[...] ST ANDREWS UNIVERSITY FEES (Sep 2018 – Jun 2022)</th><th rowspan="2">My assessment on summary judgment</th></tr>
<tr><th>COMPONENT</th><th>WHATSAPP EVIDENCE OF AGREEMENT</th></tr>
</table>

Agreement to pay H[...]'s university deposit and fees — St Andrews	**[2018/03/07] Defendant :** No - I will pay the deposit when she has made up her mind and has confirmation of her acceptance — I will make payment directly to the university **[2018/03/07] Plaintiff :** Will do. And thank you for PAYING for the university deposit. It must be received on due date otherwise she loses either place. **→ PLAINTIFF uses the word 'paying'**	- This is not evidence of the agreements or the pleaded terms, or at least not evidence that negates Mr L[...]'s defence that there were no agreements. Mr L[...] saying he will pay a deposit for St Andrews is consistent with his defence that he "volunteered … to the best of his ability" to "assist with the costs of [H[...]'s and N[...]] tertiary education and living expenses" out of his "own volition".
	[2018/04/19] Defendant : I will do everything in my power to do so — sell my jag — as advised can do 150 now — 250 would be doable over a period of time if the fees are staggered over the academic year **[2018/06/11] Defendant :** It is done. It should be in the university's account with the reference 180027799 H L[...] **→ DEFENDANT pays directly to St Andrews June 2018, as agreed.**	- These WhatsApps seem to confirm Mr L[...]'s version that he "was (and remains) at all times willing and desirous to contribute to the costs of [H[...]'s and N[...]] tertiary education and their reasonable living expenses" but "not pursuant to any agreement with [Mrs N[...]]" and "subject always to his financial ability to do so."
Ongoing St Andrews fees — annual instalments	**[2018/08/27] Defendant :** Isn't it GBP 8k for September — then GBP 8k in December — don't have money for the R10k now **→ DEFENDANT tracks the fee structure himself, confirms awareness and obligation to pay in terms of the parties agreement.**	- This WhatsApp does not "confir[m]" the pleaded agreements, or at least does not negate Mr L[...]'s version, because Mr L[...] does not acknowledge a contractual obligation to Mrs N[...]. It is consistent with Mr L[...]'s version that he was willing to pay tuition "out of his own volition". The last part of the WhatsApp is also consistent with his version that his willingness to pay was subject to his ability to pay.
	[2019/09/02] Plaintiff : So are you not going to do her fees as you promised her? Just need a straight answer please. **[2019/09/02] Defendant :** I keep my promises — not in issue — however I have not been able to sell my jag — +/- 100 short — can you come up with it — I know grandparents are not responsible — but maybe you can ask for a LOAN from your mother — I will stand good for repayment ***[2021/02/26] Defendant*:** H[...]'s University fees will be paid next week **Defendant acknowledged his obligation to pay 100% of the fees.** **[2022/03/01] Defendant :** Dear H[...] I have paid £1500 (R30900) into your Mom's a/c and asked to remit soonest to University of St Andrew's. J[...] please remit soonest.	- Mr L[...] mentions a "promise", but not all promises are legally enforceable and, in any event, the WhatsApps do not confirm a promise from Mr L[...] to Mrs N[...] (or at least do not negate his version that he was willing to pay tuition if he could afford it). - Mr L[...] mentions that "grandparents are not responsible", which seems consistent with his acknowledgement that he owes legal duties of support to H[...] and N[...] (a duty that grandparents probably do not owe to their grandchildren). Mrs N[...]'s claim is not based on those duties (if the claim were about Mr L[...]'s duty to support H[...] and N[...], then standing might be a problem for Mrs N[...], or at least there would probably be a triable issue about it: see *Butcher v Butcher* 2009 (2) SA 421 (C) at para 15 (Ms Milovanovic-Bitter quite properly drew my attention to the Supreme Court of Appeal's judgment in *Z v Z* 2022 (5) SA 451 (SCA) that goes the other way, but in the context of statutory standing under the Divorce Act, which Mrs N[...] does not plead). Mr L[...]'s plea does not, however, squarely object to standing. - Mr L[...] says H[...]'s fees "will be paid next week". But I do not agree with Ms Andrews's interpretation. It does not follow from that WhatsApp that Mr L[...] "acknowledged his obligation to pay 100% of the fees". Even if that kind of inferential reasoning is permissible on summary judgment, it does not answer the key question: what obligation? Mr L[...]'s defence takes as its starting point that he "was (and remains) at all times willing and desirous to contribute to the costs of [H[...]'s and N[...]] tertiary education and their reasonable living expenses". His WhatsApp confirming that H[...]'s "fees will be paid" rhymes with his willingness to pay. His WhatsApp does not shed any light on why he is paying, or at least does not negate his defence that his payments were voluntary, not obligatory.
SECTION B – H[...] MANCHESTER UNIVERSITY FEES (Sep 2022 – 2025)		**My assessment on summary judgment**

COMPONENT	WHATSAPP EVIDENCE OF AGREEMENT	
Agreement to pay Manchester fees — transition from St Andrews	**[2022/08/24] Plaintiff :** J[…] we don't have a choice — she will not be admitted unless it's paid BEFORE enrolment **[2022/08/24] Defendant :** Please send me ALL the details papers and documents from Man University — been asking for months from you and H[...] !!! **→ DEFENDANT is requesting the Manchester documents himself, so that he can make payment. The Defendant acknowledges his obligation to pay in terms of the agreements.** **[2023/11/01] Defendant :** J[...], as mentioned to H[...] endeavouring to pay £3000 per month towards her fees. **[2023/11/04] Defendant :** J[...] — I have put £3000 towards H[...]'s fees. **[2024/02/27] Plaintiff :** H[...]'s fees due in Uni account 15 March 2024 — R404,000.00. This is for you to pay. **[2024/03/14] Defendant :** How much is due tomorrow **→ Defendant acknowledges that he has an obligation to pay.** **[2024/03/17] Defendant :** 0ps made it — the amount I can pay is £6000. But can't be expected to do without a voucher — ie an up to date from Manchester University — any delay is yours now **[2024/03/21] Defendant :** J[...], R100k borrowed should hit my account, tomorrow, today being holiday, will pay 24k which should cover plus exchange to £6000 **2025/01/08] Defendant :** I am hoping to raise a bank loan specific for balance of H[...]'s fees, need up to date statement, Ari is standing good for me **[2025/01/25] Defendant :** Please call me re £8000 for Man U to be paid now **[2025/01/31] Defendant :** Hi J[...] can you please send me the proof of payment of the R185000 to Manchester University as promised	- Ms Andrews argues that these WhatsApps “demonstrate [Mr L[...]’s] conduct which is in line with the agreement pleaded by [Mrs N[...]]”, that Mr L[...] “on several occasions enquires about the balance outstanding' for H[...]’s university”, and that Mr L[...] “does not deny that he is liable for the Manchester fees”. - I do not read the WhatsApps to be that clear, at least not clear enough to show that Mrs N[...] has an unanswerable case on summary judgment. - The starting point for Mr L[...]’s defence is that he was willing to pay tuition and living expenses. He denies an obligation to pay under the agreements that Mrs N[...] pleads. His denial is not inherently and seriously unconvincing. It is plausible that Mr L[...] promised H[...] and N[...] that he would pay their tuition and living expenses but without it being a legally enforceable promise, or at least without it amounting to a contract between him and Mrs N[...] on the terms she pleads. I cannot, at this stage, decide which version is more probable.
SECTION C – N[...] UCT UNIVERSITY FEES (2019 – 2023)		**My assessment on summary judgment**
COMPONENT	**WHATSAPP EVIDENCE OF AGREEMENT**	
Agreement to pay N[...] UCT fees	**[2020/01/22] Defendant :** Yes 11300 still to come — 28000 for UCT - R5000 as requested **→ DEFENDANT acts in terms of agreement to pay 100%** **of UCT [2021/03/12] Defendant :** Is it 27 less 14 - ie 13 **[2021/03/12] Plaintiff :** Yes thanks. And then 7 monthly continues **[2021/03/28] Defendant :** R11000 for N[...] - ie less. R7000 for UTC - R27000 paid last month	- In this part of her schedule, Ms Andrews also refers to the UCT fee declaration, noting that Mr L[...] does not deny signing the declaration (and signing up as co-debtor for N[...] fees). Mr L[...] admits signing the declaration but denies that the declaration translates into a contract between him and Mrs N[...] (either at all or on the terms she pleads). - I do not read these WhatsApps to confirm the agreements that Mrs N[...] pleads, or at least not to negate Mr L[...]’s defence. The WhatsApps are consistent with his explanation that his payments were voluntary, not obligatory.

	→ **DEFENDANT confirms payment to UCT March 2021.** **[2023/02/02] Defendant** : I will pay N[...] 31k UTC deposit tomorrow → **DEFENDANT commits to N[...] UCT deposit. 'I will pay"**	
SECTION D – N[...] BPP / LLM FEES (2024 – 2025)		**My assessment on summary judgment**
COMPONENT	**WHATSAPP EVIDENCE OF AGREEMENT**	
Agreement to pay N[...] BPP LLM fees	**[2025/03/27] Defendant :** No only H[...] last university fee and N[...] tuition fee instalments due. Contribution to maintain of for Feb paid. March still outstanding → **Defendant acknowledges that he is liable to pay N[...] fees, as agreed between the parties.**	- In this part of her schedule, Ms Andrews also refers to a proposal that Mr L[...] made in February 2025, which included N[...] BPP fees. Ms Andrews argues that "a voluntary tender to pay is inconsistent with [Mr L[...]'s] denial to pay in terms of the agreement." I do not think that follows. Mr L[...]'s proposal is equally consistent with his version that he was willing to pay, but that there was no obligation to pay, at least not an obligation to pay under the agreements that Mrs N[...] pleads. - I do not read this WhatsApp as confirming the "agree[ment] between the parties."
SECTION E – MONTHLY MAINTENANCE CONTRIBUTIONS (2018 – 2025)		**My assessment on summary judgment**
COMPONENT	**WHATSAPP EVIDENCE OF AGREEMENT**	
Agreement maintenance payments	**[2021/10/01] Plaintiff :** Hello J[…] please make payment today. Your balance is R54k – I must make payments today. **[2021/10/27] Plaintiff :** You are now 94k in arrears plus another 6 for 50% of N[...] medical accounts. That's 100k. I need that back to pay my share. **[2021/10/27] Defendant :** I will do my best → **Defendant does not dispute the amount indicated by the Plaintiff** **[2022/05/01] Plaintiff :** Hello today being the 1st–please make 50% payment today and 50% by Friday please **[2022/06/22] Defendant :** Sending you R36000 now **[2023/07/15] Defendant :** paid 100k out of earnings – 50% of income – can't do more unless I can raise a loan – tried – at 74 told no – notwithstanding security and suretyship from Ari **[2023/07/15] Defendant :** my Jag up for sale – registration date 1998 – twenty 26 year's old – no spare parts at Jaguar dealerships – only now collected → **DEFENDANT continues to pledge assets to perform.** **[2024/09/10] Defendant :** I will try for end of the month – but I can not do the 60k and the 76 925.50 at the same time	- Ms Andrews is right that Mr L[...] "does not dispute the amount indicated by [Mrs N[...]]", but I do not see how that negates Mr L[...]'s defence that he was willing but not obliged to pay H[...]'s and N[...] living expenses. - Similarly, I do not agree that Mr L[...]'s WhatsApps about selling assets are particularly probative about the pleaded agreements. Again, Mr L[...] does not deny his willingness to pay. His defence is that there were no agreements between him and Mrs N[...], and these WhatsApps do not show that defence to be inherently and seriously unconvincing.

	[2024/10/05] Defendant : See paid R100k – will top up when pd by new client **[2024/12/17] Defendant :** Hi J[...] – put 100k in your bank account borrowed – another 100k from Ari Should be in tomorrow **[2024/12/17] Plaintiff :** Thank you J[…], so 100 in today and another 100 tomorrow? ie 200 total? Is that correct? **[2024/12/17] Defendant :** Yes if it reflects in my bank am – will keep you advised	
SECTION F – N[...] VW POLO (Car Costs included in Monthly Maintenance)		**My assessment on summary judgment**
COMPONENT	**WHATSAPP EVIDENCE OF AGREEMENT**	
Agreement to cover N[...] car costs — part of monthly maintenance	**[2021/05/04] Plaintiff :** The 4K short on N[...] – can you pay me today? His car was broken into last week and I need to replace things that were stolen it never ends. **[2021/05/04] Defendant :** Oh my word ! **[2021/05/05] Defendant :** Done ✔ please check your bank **[2021/06/28] Plaintiff :** I need to pay baron for N[...] car. I expect in my account today – I'm am not putting N[...] life at risk as he drives around with no spare tyre while you delay your responsibilities **[2021/06/28] Defendant :** Yes I am getting some money on Friday – out of the office now wil make a plan for tonight	- I do not read the WhatsApps to be that clear, at least not clear enough to show that Mrs N[...] has an unanswerable case on summary judgment. - In his opposing affidavit, Mr L[...] argues that Mrs N[...] “went ahead and purchased a car for N[...] without a consultation with me” and that he “did not agree to the purchase of car.” Ms Andrews argues that these WhatsApps show that Mr L[...] “at all times knew about N[...] car” and “the costs thereof”, and that Mr L[...] did not dispute “that the car payment is his responsibility.” I think that overreads the WhatsApps, at least as far as the pleaded agreements go. As Ms Milovanovic-Bitter puts it “the fact that [Mr L[...]] knew that N[...] has a car, and wanted to assist with payments of repairs in an obvious emergency, does not prove that [Mr L[...]] agreed to the purchase of that particular car, nor that he would be responsible for the payment to [Mrs N[...]] of 50% of the costs associated therewith.” In short, yes the WhatsApps show that Mr L[...] agreed to pay to “replace things that were stolen” from N[...] car, seemingly including a spare tyre, but I do not read the WhatsApps as confirming the pleaded agreements (or that there was an “[a]greement to cover N[...] car costs” as part of those agreements).
SECTION G – FLIGHTS AND TRAVEL COSTS		**My assessment on summary judgment**
COMPONENT	**WHATSAPP EVIDENCE OF AGREEMENT**	
Agreement to cover travel – SA↔UK flights	**[2020/03/20] Plaintiff :** Need to pay 10200 to virgin and 2000 for her train Scotland to Heathrow **[2020/03/20] Defendant :** I have already transferred R9000 to your account **[2020/12/07] Plaintiff :** Also can you make a contribution to Christmas gifts and H[...]'s and N[...] flights and holidays please. **[2020/12/07] Defendant :** Hopefully **[2019/09/02] Plaintiff :** She leaves on Friday – I have managed to get her flights sorted. Please confirm your	- These WhatsApps show that Mr L[...] paid for some of H[...]’s and N[...] flights, and that he gave some kind of “promise” to someone about it. But not all promises are legally enforceable, and the WhatsApps do not negate Mr L[...]’s version that he voluntarily paid living expenses (including flights).

	payment of the above ASAP. **[2019/09/02] Defendant :** I keep my promises – not in issue **→ Plaintiff confirms flights as part of what he must pay. Defendant 's reply: 'I keep my promises – not in issue.' He does not dispute that flights are in dispute** **[2021/05/30] Plaintiff :** J[…] pls make the payment as you promised. This is not acceptable, SA to UK – DUH. ....takes 3 days.	
SECTION H – POST-ALLEGED DENIAL CONDUCT (March 2024 onwards) This section demonstrates that the Defendant continued to perform AFTER his alleged July 2024 repudiation		**My assessment on summary judgment**
COMPONENT	**WHATSAPP EVIDENCE OF AGREEMENT**	
DEFENDANT continues to pay after March 2024 alleged repudiation	**[2024/10/05] Defendant :** See paid R100k – will top up when pd by new client **[2024/12/17] Defendant :** Hi J[...] – put 100k in your bank account – borrowed – another 100k from Ari Should be in tomorrow **[2025/01/31] Defendant :** Hi J[...] can you please send me the proof of payment of the R185000 to Manchester University as promised **→ Jan 2025: nine months after alleged repudiation, Defendant still dealing with the Manchester payment and using the word 'as promised.'**	- Ms Andrews points out that Mr L[...] "does not state why he for a period of more than 6 years continued to pay money into [Mrs N[...]'s] bank account and even paid the money after 16 July 2024, if there was no agreement." Ms Andrews also points out that Mr L[...] "does not dispute any specific item" in the schedule attached to the particulars of claim (at least not before he filed his plea). - If summary judgment is not appropriate for determining probabilities, then I do not see how it is appropriate for this kind of reasoning from inference. The fact that Mr L[...] "continued to pay" does not negate his defence that he paid voluntarily and not in terms of any agreement with Mrs N[...].
SECTION I – PROOF OF CLAIM		**My assessment on summary judgment**
COMPONENT	**WHATSAPP EVIDENCE OF AGREEMENT**	
Total fees and maintenance paid by Plaintiff on Defendant's behalf	R2,711,590 admitted – No counter-reconciliation produced No specific POC3 entry disputed POC3 is not disputed Amount which summary judgment can be granted: R1,743,992.25 R3,756,451.85 (H[...] total fees) R690,130.41 (N[...] UCT total fees) The total university fees for both H[...] and N[...] amount to R4 446 582.26 The total amount paid by the Defendant is R2,711,590.00 leaving a balance of R1,734,992.26 still due and owing by the Defendant in respect of the university fees. In respect of the remainder of the claim for maintenance, the Defendant remains liable in the amount of R 4 494 383.09 for both children	- My conclusion that Mr L[...] has a bona fide defence means it is not necessary for me to decide if Mrs N[...]'s claim is liquidated. I doubt, however, that it is as straightforward as a plaintiff preparing their own schedule and treating it as QED if the defendant does not dispute each line item. I deal with this in more detail later, but even if Mrs N[...] is right that Mr L[...] has not properly disputed her schedule, it does not really go anywhere if Mr L[...] has a bona fide defence to liability in the first place.

[38] What about the "partly written" parts of the agreements? In her affidavit, Mrs N[...] describes the letter to St Andrews and the UCT fee declaration as

"evidence" of the "written portions" of the agreements. I do not understand Mrs N[...]'s case to be that any of the "written portions" of the agreements can be plumbed from the WhatsApps. Instead, she pleads that the WhatsApps show Mr L[...]'s "inability to comply with the [a]greements", which suggests that the agreements themselves are not in the WhatsApps. But Mrs N[...]'s case is not always clear on this: in her affidavit, for example, she describes the WhatsApps as "evidence of the written/verbal [a]greements being reached". The trial court may require Mrs N[...] to sharpen her pencil on this part of her case. I have already catalogued my assessment of what I take to be Mrs N[...]'s best selection of the WhatsApps. For now, it's enough to conclude that the WhatsApps don't support an unanswerable case on the agreements.

[39] Nor do I think the letter to St Andrews and the UCT fee declaration shore up the "partly written" parts of the agreements. Ms Milovanovic-Bitter pointed out an immediate awkwardness about how Mrs N[...] relies on the letter and the declaration: Mrs N[...] pleads that H[...] and N[...] went to university "[p]ursuant to the conclusion of the [a]greements". That suggests the agreements were concluded before H[...] and N[...] went to university (and, if so, then the letter to St Andrews is no good because H[...] was already at St Andrews when Mr L[...] sent the letter).

[40] Be that as it may, the letter and the declaration do not make Mrs N[...]'s claim unanswerable. Yes, Mr L[...] acknowledges his responsibility for H[...]'s

fees in the letter. But that doesn't bridge the gap between a parent taking on a responsibility for fees and a parent agreeing to anything with another parent. If anything, the letter seems to support, at least on summary judgment, Mr L[...]'s defence that he was willing to pay but "subject always to his financial ability to do so." After all, Mr L[...] is candid in the letter that he "cannot give a guaranteed undertaking" and that he has "no other funds or access to funds, to pay H[...]'s full tuition fees." The letter is not irreconcilable with Mr L[...]'s version that he paid H[...]'s and N[...] fees "of his own volition" and not "pursuant to any agreement with [Mrs N[...]]". Ms Andrews argued that if there were no agreements, then it would have been unreasonable for a father to put his daughter in such a precarious financial position. Maybe. But where does it go? Do I infer that Mr L[...] must have agreed with Mrs N[...] to pay H[...]'s and N[...] fees and living expenses come what may because the only other universe is that Mr L[...] did not agree and is a bad father? An inference like that isn't the stuff of summary judgment.

[41] Mrs N[...] seems at first to be on firmer ground with the fee declaration. It's a contract, and its terms are clear: Mr L[...] is "jointly and severally liable" with N[...] as a co-debtor "for all amounts" due to UCT. But the firm ground quickly gives way because, as Mr L[...] pleads, the declaration binds him to UCT, not to Mrs N[...]. Mrs N[...] isn't a party to the declaration, so it's not clear how the declaration "indicates the portion of the [a]greements entered into and concluded between [Mrs N[...]] and [Mr L[...]]", as Ms Andrews puts it in her heads of argument. Nor does it help to point to the declaration as evidence of Mr L[...] being "solely liable to pay the fees". Liable to who? To

the universities in contract? Or to H[...] and N[...] in common law or statute? Or to Mrs N[...]?

[42] Ms Milovanovic-Bitter points out that Mrs N[...] pleads a contract (or contracts) between her and Mr L[...], but she doesn't plead a term of the contract that Mr L[...] would reimburse her if she paid what he owed. Mrs N[...]'s case seems to be that she loaned money to Mr L[...] by discharging the debts he owed (presumably to the universities and to H[...] and N[...]). And that might explain why she ultimately pleads her case as "reimbursement" for "monies lent and advanced". I have doubts about whether that's the right claim: if the argument is that Mrs N[...] discharged Mr L[...]'s debts, then Mrs N[...]'s remedy seems to be in unjustified enrichment, not in contract: compare *Odendaal v Van Oudtshoorn* 1968 (3) SA 433 (T) at 443A-B (the translation in the headnote is "[i]n our law A who for his own benefit pays C's debt to B has a right of recovery from C which is founded on unjust enrichment."). Neither party raised the point, so I express no view on it. Rightly or wrongly, Mrs N[...] pleads a claim in contract. Mr L[...] denies the contract. Neither the declaration nor the letter to St Andrews shows that the claim is unanswerable or that there's no triable issue.

[43] Mrs N[...] also points to a settlement proposal and a series of emails from Mr L[...] in the first half of 2025. Ms Andrews argues that "the fact that [Mr L[...]] engaged in settlement negotiations, proposed structured payment arrangements, and acknowledged specific amounts as fair and reasonable is irreconcilable with the defence that he owed nothing and paid only what he chose." Or, more pithily, "[a] man who volunteers contributions at his own discretion has nothing to settle." That might make for good cross-

examination, but it's not enough for summary judgment. The settlement discussions imply, at most, a dispute. They do not imply the agreements, or, more suitably for summary judgment, they do not negate Mr L[...]'s defence that he was not paying pursuant to an agreement with Mrs N[...].

[44] If anything, the discussions line up with Mr L[...]'s defence: he denies owing Mrs N[...] but notes that he "made contributions to [H[...]'s and N[...]] university fees and upkeep to the best of [his] financial position to do so over a number of years". Mr L[...] also refers to his "parental obligation" to pay N[...] BPP tuition, which aligns with his explanation in his affidavit that "[a]ny claim for education and maintenance … can only be brought by H[...] and N[...] respectively in terms of the common law and the Maintenance Act." Mr L[...] makes proposals and gives undertakings as part of the settlement discussions. Mr L[...] says his offer to pay H[...]'s fees "must not be construed as any admission of any legal obligation to do so". But that disclaimer aside, Mrs N[...] doesn't sue on any of those proposals or undertakings, so I don't think they help her case, at least not on summary judgment.

[45] That leaves the payments. Mrs N[...] is right that Mr L[...] paid her many times for H[...]'s and N[...] tuition and living expenses. Ms Andrews argues in her heads of argument that because the payments are "common cause", Mr L[...] "cannot now allege that [Mrs N[...]] had no right to receive or enforce payment." The payments can't hold that rhetorical weight, at least not on summary judgment. Mr L[...] doesn't deny he paid; but he does deny his liability to Mrs N[...] under the pleaded agreements. And Mr L[...] explains why he paid Mrs N[...] instead of the universities and H[...] and N[...] directly:

Mrs N[...] "was managing, and still manages, the financial affairs and requirements of the children", and that it was more convenient for Mr L[...] to pay Mrs N[...] instead of making his own international payments. How Mr L[...] paid doesn't, at least not on summary judgment, say much about why he paid.

[46] I am satisfied that Mr L[...] has a bona fide defence. That conclusion means it's unnecessary to decide if Mrs N[...]'s claim is for a liquidated amount (even if the architecture of rule 32 requires a liquidated amount before getting to a bona fide defence). The two questions overlap. If Mrs N[...] is right that Mr L[...] agreed to pay all tuition and all living expenses, then I can see the argument that all I would need to do is add up each item on Mrs N[...]'s schedule. But the triable issue on whether there is any agreement between

Mrs N[...] and Mr L[...] means I do not even get to the point of reaching for my calculator.

[47] Ms Andrews argued that I should deal with tuition and maintenance separately, and asked in the alternative for various iterations of summary judgment on separate amounts for tuition and maintenance. She conceded that there may be room for debate when it comes to how much maintenance Mr L[...] owes, especially if the agreements covered only reasonable maintenance (though Mrs N[...] seems to plead the agreements as requiring a complete indemnity on both tuition and maintenance). I accept that what Mr L[...] owes for tuition is an easy calculation based on the universities' invoices (even though no invoices are before me). But whether Mr L[...] owes anything at all (at least to Mrs N[...]) is a triable issue. I could resort to this

kind of salami slicing, to use Ms Milovanovic-Bitter's phrase, only if I were satisfied that Mr L[...] doesn't have a bona fide defence. He does, so the alternative relief falls with the primary relief.

[48] Ms Milovanovic-Bitter said my job is simple: Mr L[...] denies the agreements that Mrs N[...] pleads. Ms Andrews gave me some pause, but in the end, the simple defence stands in the way of summary judgment.

[49] I have wide discretion on costs. Rule 32(9) spells out two consequences for costs if a plaintiff's claim is not for a liquidated amount, or if the plaintiff "knew that the defendant relied on a contention which would entitle such defendant to leave to defend". The first is punitive costs and the second is a stay of the action until those costs are paid.

[50] Mrs N[...]'s claim is probably not for a liquidated amount. I am surer that she "knew that [Mr L[...]] relied on a contention which would entitle [him] to leave to defend". That much should have jumped out from his plea and from his affidavit. Late last year, Mr L[...] gave Mrs N[...] an opportunity to withdraw the summary judgment application in a letter. In fairness to Mrs N[...], the letter focuses more on Mr L[...]'s liquidated amount objection and less on his bona fide defence. But his bona fide defence is clear enough in his plea and in his affidavit (and it's touch and go at best for her whether her claim as a whole is liquidated). The 'or' in rule 32(9) means that my conclusion on Mr L[...]'s bona fide defence is on its own enough to unlock my discretion on costs and the two consequences. And if all that is not enough, Mrs N[...] lived by the sword by asking for "the highest punitive order for costs" against Mr L[...].

[51] Both sides asked for the costs of counsel on scale C. Scales for the costs of counsel apply only to party and party costs: *Mashavha v Enaex Africa (Pty) Ltd* 2025 (1) SA 466 (GJ) at para 5. My conclusion on attorney and client costs seems to mean that I don't need to decide the scale for the costs of counsel (but see the order in, for example, *Salvage Genie (Pty) Ltd v Absa Bank Limited* 2024 JDR 4419 (GJ)). If it assists the taxing master on taxation, this case is somewhere between the "unusually complex, important or valuable" case that warrants scale C and a "[r]un-of-the-mill" case that warrants scale A, so scale B fits fine.

[52] I make this order:

1. The application for summary judgment is dismissed.

2. The Defendant is granted leave to defend.

3. The Plaintiff is ordered to pay the Defendant's costs of the application for summary judgment on the attorney and client scale, including costs of counsel.

4. The action is stayed until the Plaintiff pays the costs referred to in paragraph 3.

J Mitchell AJ

Acting Judge of the Gauteng Division, Johannesburg

Date of hearing:	29 July 2026
Date of judgment:	3 August 2026
For the Applicant/Plaintiff:	R Andrews instructed by HBG Schindlers
For the Respondent/Defendant:	A Milovanovic-Bitter instructed by Jennifer Mynhardt Attorneys