



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2023-049221

DELETE WHICHEVER IS NOT APPLICABLE
(1)REPORTABLE: ~~NO~~
(2)OF INTEREST TO OTHERS JUDGES: ~~NO~~
(3)REVISED: YES ✓

In the matter between:

LEHODI ANTHONY RAMABOEA

Applicant

and

MAMOLATELO ALFRED SELOTA

Respondent/Defendant

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 28 August 2026.*

JUDGMENT

SUMMARY:

Summary Judgment – bona fide defence

INTRODUCTION:

- [1] Before me is an application for summary judgment in respect of professional services rendered by an advocate to an attorney. I have to decide whether Defendant has disclosed a *bona fide* defence.

THE PLEADINGS:

- [2] It is common cause that Defendant briefed Plaintiff from time to time and that Plaintiff rendered invoices for the work performed by him.

- [3] Defendant raised the following "defences" in his Plea dated 1 September 2023:

3.1 Plaintiff would only send an invoice once a matter is settled with costs.

3.2 Such invoice would then form part of the party and party bill during taxation.

3.3 Plaintiff would only be entitled to the sum allowed by the Taxing Master (presumably in respect of counsel's fees).

3.4 In response to the monthly statement which Plaintiff annexed to the Summons, Defendant averred that he "*made upfront payment to Plaintiff which is not reflected anywhere in (the statement)*".

3.5 In response to the total outstanding indebtedness relied upon, Defendant states that Plaintiff's representative, "Auxcon" (an entity which does collections on behalf of advocates) never reverted to discuss amounts allowed by the Taxing Master in each instance.

OPPOSING AFFIDAVIT:

- [4] In his affidavit opposing summary judgment (dated 16 July 2024), Defendant raised the following defences:
- 4.1 Plaintiff ought to have proved his invoices with Defendant's appointed curator.
- 4.2 Prescription.
- 4.3 The curator ought to have been joined (as a defendant).
- [5] Defendant's version of the oral agreement with Plaintiff now entailed that payment would be effected within a reasonable time. He explicitly stated that *"Defendant did not enter into Contingency Fee Agreement with the Plaintiff..."*.
- [6] Under the heading *"Bona Fide Defence"*, he alleges that he had paid a deposit of R36 200.00 for certain matters upon Plaintiff's request.

HEADS OF ARGUMENT:

- [7] When the matter was called on Tuesday, 18 August 2026, no Heads of Argument had been uploaded on CaseLines by Defendant. Defendant appeared in person and handed up his heads. In order to finalise the matter, I allowed it to stand down for argument until 20 August 2026 when Adv Rangelulu appeared on Defendant's behalf.
- [8] The following was raised in Respondent's heads:
- 8.1 Technical defences such as non-compliance with Rule 18(6).

8.2 Prescription.

8.3 That Plaintiff ought to have approached the *curator bonis*.

8.4 Also that "*all the required money due to the Applicant has been paid*".

RELEVANT THRESHOLD:

[9] The threshold which a defendant has to meet to evade summary judgment is trite. In a nutshell:

9.1 A defendant's affidavit should set out material facts and particulars.

9.2 Although the defence need not be formulated with the precision that would be required for a plea, a defendant must provide sufficient clarity to enable the court to ascertain whether he has deposed to a defence which, if proved at the trial, would constitute a good defence to the action.

9.3 The defendant must do so with reference to the plea that was delivered.

9.4 The defence must not be averred in a manner which appears in all the circumstances to be needlessly bald, vague or sketchy.¹

DEFENDANT'S DEFENCES AND THE MANNER IN WHICH THEY WERE RAISED:

[10] I shall start off with the defences raised in the Plea, since it is there where Defendant was supposed to lay the basis for establishing a *bona fide* defence. The primary defence relied upon is taxation (not by the curator, but by the Taxing Master of the court).

¹ See in general Van Loggerenberg: Erasmus Superior Court Practice, Volume 2 at RS25, 2024, D1 Rule 32-57 to Rule 32-58.

[11] This defence is negated by a number of factors, *inter alia*:

- 11.1 It is not disputed that Plaintiff performed the relevant work during the period 2017 to 2018.
- 11.2 The Plea was filed five to six years thereafter.
- 11.3 The obvious question is, why have all the bills not been taxed by now – if that was really the arrangement? No explanation is provided in this regard by Defendant.
- 11.4 Defendant makes no allegation that he diligently submitted bills for taxation – not in the Plea or any of the other documents relied upon by him.
- 11.5 The allegation that he had made an “*upfront payment*” to Plaintiff (no amount or dates are provided) contradicts his own alleged agreement that payment would be made *only after taxation*.
- 11.6 His Opposing Affidavit also contradicts the taxation defence because:
 - It does not refer to taxation before the Taxing Master at all. It simply blames Plaintiff for not having proved his claims with the curator. The curator was only appointed in May 2022 – a number of years after the last work had been performed by Plaintiff.
 - He now says the claims have become prescribed – contrary to the “*suspensive condition*” of taxation upon which he relies in his Plea.

- He says there was no contingency fee agreement. (Such an agreement would have been a prerequisite if Plaintiff had really agreed to limit his fees to amounts that will be taxed later on).

11.7 The “*defence*” that Auxcon never contacted him to discuss what had been taxed, also does not make sense:

- If the agreement had been “*I shall pay you what has been taxed*”, what was there to discuss?
- Defendant does not allege payment of all taxed amounts either, neither does he tender payment thereof in his Plea.

OTHER DEENCES:

[12] I have already pointed out that a defendant would not be *bona fide* if he later adds defences which had existed at the time of his plea but were not raised. Insofar as Defendant could in principle rely on such defences, the ones raised are also not *bona fide*. I provide a few examples:

12.1 The Plea does not refer to the curator at all, although such curator had been appointed more than three years before the Plea was filed.

12.2 Needless to say, the Opposing Affidavit is silent as to what information Defendant had furnished to the curator (such as the Summons *in casu*).

12.3 The non-joinder of the curator is therefore a red herring and not raised in a *bona fide* manner.

12.4 The defence of payment is raised in such vague terms that it can never be *bona fide*. If he had really paid Plaintiff's claims, why does

he then raise the issues of taxation, prescription or failure to prove the claims with his curator?

CONCLUSION:

- [13] The vague and contradictory manner in which the defences were raised leaves no doubt that the Defendant has no *bona fide* defence to Plaintiff's claims and justifies punitive costs.
- [14] It was pointed out by Plaintiff's counsel that a certain amount was duplicated in his annexures to the Summons – the sum reflected in Annexure "X1.4" pertaining to the matter of "*Maningi Lucia Mbanjana v Road Accident Fund*" is also contained in Annexure "X1.6" - although the "*day fee*" was understated in Annexure "X1.4". The nett result is that the sum of R30 000.00 should be deducted from the amount claimed, leaving a balance of R346 600.00.

ORDER:

- [15] Summary judgment is granted against Defendant for:
- (1) Payment of the sum of R346 600.00 (three hundred and forty six thousand and six hundred rand).
 - (2) Interest on the aforesaid sum at 11.5% per annum from 16 April 2025 to date of payment (both days included).
 - (3) Costs of suit on an attorney and client scale.


F J ERASMUS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Electronically delivered and signed.

APPEARANCES:

APPLICANT/PLAINTIFF:	Adv L Srydom
INSTRUCTED BY:	Du Bruyn & Morkel Attorneys
RESPONDENTS:	Adv Rangululu
INSTRUCTED BY:	Rammutla At Law Inc