

SOUTH AFRICA / JUDGMENT

Buffalo City Municipality v Zinala Information Technologies and Communication System CC (179/2009) [2010] ZAECHGHC 108 (12 November 2010) [2010] ZAECHGHC 108

COURT

Eastern Cape High Court, Grahamstown

BEFORE

J.D. Pickering

CASE / FILE NUMBER

179/2009

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

1

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE, GRAHAMSTOWN)

CASE NO: 179/2009

DATE HEARD: 30 Aug,

8 – 10 Nov 2010

DATE DELIVERED: 12 Nov 2010

In the matter between

BUFFALO CITY MUNICIPALITYPlaintiff

Vs

ZINALA INFORMATION TECHNOLOGY

AND COMMUNICATION SYSTEM CCDefendant

JUDGMENT

PICKERING J:

During 2009 plaintiff issued summons against defendant for repayment of the sum of R880 654,12. In its particulars of claim plaintiff

alleges that during or about July 2007 and at East London, defendant submitted an invoice to plaintiff for payment of the aforesaid sum in respect of work allegedly done and/or services allegedly rendered by defendant to plaintiff. Plaintiff avers that it has not been able to locate the said invoice and that it has been advised by a member of the defendant, namely Mr. Mazomba, that “due to computer errors” the defendant was unable to produce a copy of the said invoice.

Plaintiff alleges that in the bona fide and reasonable belief that defendant had provided work and/or services to it, it duly effected an electronic payment of the said sum on 27 July 2007, directly into defendant’s Standard Bank account. It alleges further that the said amount was in fact not owing to defendant at any time as no work had been done, nor services provided, by defendant to plaintiff at any stage and that the payment was accordingly unjustified and without any cause.

In its plea the defendant alleged baldly that the invoice submitted by it to plaintiff was “for services rendered by the defendant at the plaintiff’s special instance and request.” The defendant denied further that Mr. Mazomba had informed the plaintiff that the inability on defendant’s part to produce a copy of the invoice had been due to “computer errors” and pleaded that its inability in this regard was “due to the fact that the defendant has lost its records and cannot reproduce a copy thereof due to the fact that the computer that the invoice was generated from had crashed and as a result all the information that was saved in the said computer was lost.”

Plaintiff then requested certain particulars for trial. Asked what services were rendered by defendant to plaintiff the defendant

replied that this was a matter for evidence and refused to furnish the particularity sought. Asked further “precisely where, within the organisation of the plaintiff, were information technology and communication systems services or related services provided by the defendant for the plaintiff” the defendant replied that it “has not pleaded that it supplied information technology and communication systems services, or related services.” (paragraph 1.14).

The matter then proceeded to trial with plaintiff calling, as its first witness, Mr. Stander, the principal accountant for Treasury and Management Accounting in the employ of plaintiff. During the course of his evidence it emerged that, despite defendant’s reply to the request for further particulars in paragraph 1.14 it was in fact defendant’s case that it had supplied information technology services to plaintiff. Mr. Mkuhlu, who appeared on behalf of defendant, submitted that in effect defendant’s reply had been unfortunately and incorrectly worded. He accordingly sought an amendment to the reply to the effect that “whilst the full extent of the services rendered by defendant was not known the defendant is however aware that it had to do with stream-lining of comprehensive interface between Venus and Management using Hyperion, assisting with improvements on the Budget system of the plaintiff.” (Defendant’s amended reply para 1.4) These services, so it was averred, were rendered “at the office of the Chief Financial Officer of the plaintiff in East London.” (para 1.14)

In an affidavit in support of the application for an amendment Mr. Mazomba stated that the errors in the original reply had been

occasioned by the fact that he had given instructions to his attorney over a cell phone which had kept “breaking up” and that his attorney had not heard him properly.

The proposed amendment necessitated a postponement of the trial in order to enable plaintiff to investigate the matter. The case was accordingly postponed and defendant was ordered to pay the wasted costs occasioned thereby.

Although Mr. Stander was recalled it will be convenient to start with the evidence of Ms. Smith, a chartered accountant of Marais and Smith. She testified that she has been a service provider with plaintiff for a number of years.

In the course of preparing a reconciliation of certain of plaintiff’s financial accounts for the year 2007/2008 the debit of R880 654,12 was found, with no supporting documentation thereto. Ms. Smith was requested by Mr. Pillay, the programme manager of plaintiff, to obtain a copy of the relevant invoice as well as details of the services performed by defendant for plaintiff, as no one at plaintiff was aware of such services having been rendered nor were there any copies of any relevant documentation to be found other than a copy of the Electronic Funds Transfer (“EFT”) which indicated defendant as the payee.

Ms. Smith testified that she contacted Mr. Mazomba on 29 April 2008 and advised him that she would send him a fax setting out the details that were required. Such fax (A14) was duly sent on 29 April 2008. It reads, inter alia, as follows:

“As discussed telephonically I have been requested by the Buffalo City Municipality to ensure they have adequate supporting documentation on their files. Please can you provide me with copies of the invoices that you have issued to the Buffalo City Municipality. In addition, please can you give me the department and name of person whom your corporation dealt with when working with the municipality. Please can you also let me have a brief of what work you performed for the municipality. In particular, I am interested in an amount of

R880 654,12 paid on the 27 July 2007.”

When no reply was received to this letter it was re-faxed to Mr. Mazomba on 5 and 6 May 2008. Eventually, on 7 May 2008, Ms. Smith

managed to make contact with Mr. Mazomba to whom she spoke personally. He advised her that he was unable to produce a copy of his invoice because his computer had “crashed” and all his accounting records had been lost. He told her that he was unable to recall with whom he had dealt at plaintiff’s offices, nor was he able to recall what work he had performed for plaintiff.

Ms. Smith testified further that an investigation of the defendant indicated that its accounting officer was a certain Mr. Mavuso,

allegedly a chartered accountant. Investigations made by Ms. Smith with the South African Institute of Chartered Accountants revealed

that he was not registered with them and that he was accordingly not a chartered accountant.

In his evidence Mr. Stander testified that in the case of contracts involving a sum of money in excess of R200 000,00 the plaintiff was obliged to put the contract out to tender. This involved, inter alia, the placing of advertisements in a newspaper whereafter the incoming tenders would be evaluated and adjudicated upon. A prospective tenderer was obliged to submit certain documentation together with the actual tender document itself, such documentation including, in the case of a close corporation, the members document, identity documents, as well as tax clearance certificates. The successful tenderer would receive a letter of award and would be placed on the list of service providers to the plaintiff. All the documentation relevant to the successful tender would thereafter be kept by the plaintiff and would not be destroyed. After two years it would be sent to plaintiff's archives.

In the present case it is common cause that the amount of R880 654,12 was paid by plaintiff to defendant on 27 July 2007. It is also common cause that the only document relating to this payment to defendant which could be found in plaintiff's records is the authorisation of the EFT to defendant (Exhibit A1). I will revert to this document hereunder.

Mr. Stander confirmed that this payment had come to light during the course of an audit by plaintiff's accountants, Marais and Smith, during January 2008. They had raised certain queries relating to the payment and had requested that a search of plaintiff's

departments be undertaken in order to obtain information as to why the payment had been made. This search had been undertaken and had revealed that defendant was not listed on plaintiff's data base as a service provider or supplier. More specifically, it was not listed as a supplier to plaintiff's Management Information Systems, this being plaintiff's Information Technology

Department. In this regard Mr. Stander stated that, because of defendant's name indicating that it was an information technology company, he had taken defendant at face value and searched for any information technology work or services which might have been performed or rendered by defendant to plaintiff. There were none.

On 22 February 2008 he sent an email (A3) to Mr. Vincent Pillay, then the Programme Manager of plaintiff stating, inter alia, as follows:

"The following steps have been taken to find the supporting documentation regard this matter:

1. L Wiggil (Cheque Processing Department ext – 3132) has searched for the documentation with N. Mtangayi (Finance ext 3377)

and L Smith (Consultant) in the Cheque Processing Department.

2. Nonzaliseko called Standard Bank to get the contact number of Zinala Information Technology, however the bank would not give BCM

the information but offered to call Zinala Information Technology and asked if the bank can give BCM their details so that we could call them to request a copy of the Invoice. Zinala Information Technology did not give Standard Bank the permission requested but offered to call BCM. BCM has not received a call yet.

3. N. Mtangayi and I (P. Stander, Finance, ext 3357) searched my office for the supporting documentation.
4. N. Mtangayi, L. Ramoo (Consultant), K. Niewoud (Consultant), Y. Ngabase (Finance ext. 3780) and I searched Nonzaliseko's

office.

5. Y. Ngabase asked H. Yako (Expenditure ext. 3039) if he had any supporting documentation but no details were found.
6. I asked P. Birungi (MIS ext. 3545) to search for Zinala Information Technology as a supplier, she confirmed that Zinala Information Technology is not a supplier to MIS."

The same day he received an email from Ms. Ngabase, the accounting clerk: Budget and Treasury, who stated that she had taken the

following steps to search for any supporting documents, namely:

"A Checked all the files in room 226 in the presence of the Senior accountant

B Spoken to Mr. Kati, the accountant to ascertain where I could get the information regarding any transfer that could be made by the municipality to any supplier, Mr. Kati referred me to Mr. Hugo Yako.

C I also spoke to Mr. Hugo Yako and asked him to check if the transfer was not made in their department and he also searched and

could not find any details or supporting documents relating to the transfer."

On 17 September 2008 the General Manager: Asset and Risk Management of plaintiff's directorate of financial services stated in a memorandum addressed to the Acting Chief Financial Officer of plaintiff's Directorate of Financial Services that no payment had been processed to defendant through the sundry payment system. On the same day the General Manager: Supply Chain Management confirmed that the defendant was not included in plaintiff's payment lists nor did it appear in plaintiff's data base as a listed supplier.

Mr. Stander stated that during 2008 he contacted a male member of defendant although he could not recall his name. It is now common

cause that this was Mr. Mazomba. He asked him what work had been performed by defendant but Mr. Mazomba was unable to furnish any

details thereof. He stated that he could not remember who of his staff had actually done the work. He informed Mr. Stander, however,

that his computer had crashed and that he did not have a copy of the relevant invoice. He undertook to ask around with his staff and come back to Mr. Stander. He never did so. Accordingly, after some time Mr. Stander again telephoned him but again was informed that he had no information.

Reverting to the document (Annexure A1) Mr. Stander testified that it emanated from the office of the Chief Financial Officer of plaintiff and had been prepared by a certain Mr. Zukisa Manziya, who has since left the employ of Buffalo City Municipality. The document is an instruction to Standard Bank to transfer the amount of R880 654,12 from plaintiff's general account to defendant's account. At the foot thereof are printed the name of the General Manager, Pam Adonis, as well as the name of the Acting Chief Financial Officer, Mr. Mnqonywa. Mr. Stander testified that the signature appearing above that of the name of Ms. Adonis was in fact that of a certain Mr. Laas and the signature appearing above that of Mr. Mnqonywa was in fact that of a certain Mr. Weston.

Mrs. Adonis, the General Manager: Budget and Treasury, testified that she had been employed by plaintiff from 1994 to 1999 and had then been re-appointed from 2004 to date. During 2007 she was in her present position.

She stated that some time after 2004 the decision had been taken to upgrade the plaintiff's financial accounting systems. Because the estimated cost of the project was in excess of R200 000,00 the plaintiff was obliged to put it out to tender. Mrs. Adonis confirmed that a company known as GBI was the successful tenderer. This company was thereafter taken over by EOH Intelliens. She confirmed that the work was performed in the main by two men, Messrs. Cradock and Hennek.

During the course of installing the new system Cradock and Hennek were in the plaintiff's offices for approximately a year. They started by using the office of the project officer, Mr. Hoffert, before moving down the corridor to an office between her office which was situated in the corner of the building and that of Mr. Hoffert. The office of the Chief Financial Officer (CFO) was, she said, on the other side of her office to that of Mr. Hoffert.

She stated that she knew nothing of any tender having been advertised as alleged by defendant. She had never set eyes on Mr. Mazomba before testifying. She had not seen him in the corridor or in the CFO's office where, it was put to her by defendant's attorney, Mr. Mazomba had been performing his work. She stated that despite defendant's averments as to the work performed by him there was still no interface between the Venus and Hyperion systems.

It was put to her that Mazomba, upon satisfactorily completing the work, had submitted his account at the office of the CFO, who was then Mr. Brian Shepherd. She stated that this would have been strange because that office did not deal with service providers. The implementation of the systems had been delegated to her by the CFO and she accordingly had the oversight thereof.

Mr. Craig Weston, the present Program Manager: Asset Management and Financial Accounting of plaintiff testified that he had been in the employ of plaintiff for over twenty two years, during which time he had gained a deep understanding of municipal financial affairs. He had also acted as General Manager and Chief Financial Officer. He confirmed that the signature appearing on the EFT (A1) above the name of Pam Adonis was that of Mr. Laas, the Chief Accountant for Financial Accounting. The signature appearing above that of the Acting Chief Financial Officer was Mr. Weston's own signature. He stated that on 27 July 2007 he was particularly busy when Zukisa Manziya, who was employed in the Budget and Treasury Department, brought him this particular EFT together with a number of other transfer and investment payments. He went through the attached documentation and was satisfied that everything was in order and supported by the necessary authority such as invoices, payment requisitions and the like. Had such necessary documentation not been attached he would not have signed the EFT. He had, however, no longer any independent recollection of the details of the attached documentation. In authorising the payment he believed in good faith, on the basis of the supporting documentation, that the money was in fact due. He was satisfied he said because "there would have been a requisition voucher which would have been requested by an individual in the Directory Department which would have been approved by a person with the necessary authority and there would have been supporting documentation such as an invoice attached to the document. So I would have signed in good faith."

He stated that had there in fact been a tender awarded to defendant there would have had to be documentation in the records of the municipality to that effect. In this regard he stated that such a tender would have to go through a number of committees including the bid specification committee. There would be minutes reflecting that. It would also go through an evaluation committee where the tenders would be evaluated against one another. There would be minutes thereof. It would then only go to adjudication by the adjudication committee which would grant the actual tender and appoint the service provider. Likewise, minutes thereof would be available. A letter of appointment would be prepared which would be presented to the service provider. All of this would be on file. In summing up his evidence in this regard he stated that "the minutes of all those committees, of a specification committee, of the valuation committee, the adjudication committee" would be available. There would also be resolutions and the appointment letter. None of these documents exist. It was clear therefore that no such contract had been put out to tender and accordingly it could not have been awarded to defendant. Mr. Weston stated further that none of the documents which had been attached to the EFT could be found. The original EFT itself that had been filed with the supporting documentation was also missing. A copy of the EFT was, however, found in the banking section. According to Mr. Weston it had never before happened in all his years with the plaintiff that the original EFT together with supporting documentation had gone missing. This he said was "very very strange."

Mr. Hennek, a computer expert, testified that he was involved in business intelligence work, involving, inter alia, the analysing of information connecting to various systems in order for informed business decisions to be made.

During 2004 plaintiff invited tenders in respect of a so-called activity based costing initiative. This tender was awarded to the

company for which he was working, namely Global Business Intelligence. Global Business Intelligence was later acquired by a company called EOH in consequence whereof GBI changed its name to Intelliens. Mr. Hennek stated that plaintiff was utilising a general ledger accounting computer package known as Venus. His mandate, so he said, was “to report using Hyperion business intelligence to extract information from this system. Initially it was from the activity based costing model we then used it to do, to report from the budgeting application, so we needed to align and integrate systems to produce budget reports.” He stated further that “we needed to report out of various systems. Initially it was brought in to report out of the activity based costing initiatives that were happening and out of the budgeting application. One key element in budgeting is how you are actually performing and you need to measure the two across.” According to him Hyperion was able to report “the actual against the budget on an annual year on year basis” although this was a very tedious task because the two systems, Venus and Hyperion “cannot speak to each other actually”. The requirement therefore was for people “to integrate data information for your budgeting application to pull through your actuals out of your GL system, so there has always been a requirement for hands on, I mean in the perfect world all systems speak to each other, but in reality they don’t.” In all the circumstances there was, he stated, no interface between the two systems although computer experts such as himself were working towards the smooth integration of the general ledger and the budgeting application. He stated that this had hitherto not been technically possible but that were such an interface to be developed it would save a great deal of time and effort. By interface he meant “the speaking of different systems, in this case, the general ledger system which takes your actually daily transactions and your budgeting application so the integration between them would be a seamless integration somehow where you get figures from your actuals to tie up with what you budgeted without there being any sort of manual intervention.” He stated that skills in Hyperion were few and far between and that there were not many trained consultants or experienced Hyperion intelligence consultants in South Africa. He estimated the number as being probably less than ten. He knew all of his competitors and he had definitely not heard of Mr. Mazomba nor defendant as Hyperion specialists.

It was put to him that Mazomba had in fact achieved the interface which he had said was impossible. He replied to this as follows,

namely:

“From a Venus application system it is impossible to have been done prior in the past. It is only this year that the city has acquired what BSX has developed known as a replicator which allows the information in the general ledger to be stored in a data base. When that happens a data base that can be read by other products like Hyperion. So that has been acquired this year and that is why we are busy with this interface at the moment. If it was done in 2007 then that is really a miracle, that is the best kept secret.”

He reiterated that there was no such interface on plaintiff's systems and that he could "firmly say" that it does not exist. He stated further that in any event Mazomba would not have been able to have used the plaintiff's computers because he did not have the necessary passwords which would have enabled him to access the systems. He stated further that when the computer systems were being installed in plaintiff's offices he initially worked in Mr. Hoffert's office because Hoffert was the plaintiff's project driver. The situation was not ideal because of the number of servers and eventually they were allocated another office a few doors down from him. All the work was done from this office.

He estimated that, without knowing what defendant's hourly rates were, it would take at least 1 000 man hours in order to

perform around R880 000,00 worth of work, which translated to a period of approximately 5,2 months.

Mr. Brian Shepherd, presently a financial strategist with the Development Bank in Kimberley, testified that during 2007 he was in the employ of plaintiff as the Chief Financial Officer. During the period January 2007 to July 2007 he was on duty in East London and was in his office on a daily basis. His suite of offices consisted of his secretary's office, a boardroom and his own office. In order to access that suite of offices a special key was required. No one was allowed into his office without his permission. At no stage did anyone request permission for any employee or member of defendant to use either his office or his secretary's office. He stated that he did not know Mazomba and had never seen him before testifying. He denied that Mazomba could have worked in his secretary's office because it had no spare computer power point. In any event Mazomba would not have been allowed to utilise his secretary's office for work purposes because that is where a number of confidential documents were kept. He stated that if Mazomba was indeed appointed to work on the Hyperion system he would have been allocated to the office of Hoffert who was, after all, the officer in charge of computer programs. It was put to him during cross-examination that Mazomba had also communicated with him by email and he denied this. He stated that even if Mazomba's computer had crashed he would still have had a hard copy of the letter of appointment awarding him the tender. That letter would not have been emailed to him. It was then put to him that Mazomba had lost that letter, this averment being raised for the first time since the trial had begun.

He stated that when he left the employ of plaintiff the interface between the Venus and Hyperion systems was still not functioning.

Mr. Mazomba testified on behalf of defendant. He stated that after matriculating he had studied information technology at the East Cape Technicon for two years before leaving without his diploma. He had conducted his own research into computers, however, and had mostly gleaned his information and technical skills in the information technology field from the Internet. It was from the Internet that he gained his knowledge of the Venus and Hyperion systems.

He stated that he was a member of the defendant close corporation together with his now ex-wife. There were no other staff members. He had not known that the defendant's auditor, Mr. Mavuso, was not in fact a chartered accountant. The defendant was registered during

2006. It was not registered for payment of VAT because Mavuso advised him that this was not necessary.

During or about 2007 he saw an advertisement placed by plaintiff on a notice board calling for tenders for work on plaintiff's

computers. He applied and was duly awarded the tender. Although in his particulars for trial he had stated that he had no recollection

as to whether the contract between himself and plaintiff was written or oral he now stated that it was indeed entirely in writing. He stated that he never read the particulars for trial and did not recall clearly having told his attorney, Mr. Mkuhlu, that he was not certain whether it was written or oral. He had told Mr. Mkuhlu from the first consultation that the contract had been awarded to him in terms of a tender. He had no idea why this should not have been stated in the particulars for trial. He stated that he had also informed Mr. Mkuhlu at the outset of the exact nature of the work which he had to perform in terms of the tender. Mr. Mkuhlu had to answer for the manner in which the plea and particulars for trial were drafted. He referred in this regard to his affidavit of 30 August 2010 in support of the application for an amendment, wherein he had stated that he and Mr. Mkuhlu could not hear each other properly because of the bad reception on the cell phone.

He was referred under cross-examination to the reply set out in paragraph 1.4 of the amended particulars for trial, namely:

"Whilst the full extent of the service rendered is not known to the defendant, the defendant is however aware that it had to do with stream-lining of comprehensive interface between Venus and Management using Hyperion, Assisting with improvements on the Budget system of the plaintiff." (sic)

He did not know why Mr. Mkuhlu had drafted the reply in this manner. He had told Mr. Mkuhlu of the work performed by him and Mr. Mkuhlu had written this down. He stated that he had always been certain of the full extent of the service rendered by him to plaintiff and the reply was accordingly wrong. He had not had the opportunity of looking at the reply in order to check it. He was then reminded of his affidavit wherein he had specifically requested that the particulars for trial be amended to include precisely that reply. He stated that he had trusted Mr. Mkuhlu to write "whatever was the truth."

He was asked as to how the figure of R880 654,12 had been calculated and as to whether he had merely plucked this figure out of thin air. He denied having done so, stating that "there was a way of calculating." Asked as to what factors he had taken into account in his calculations he replied that he was unable to say. He could also not say whether this figure was based on a certain number of hours and a particular rate. Questioned as to how the figure came to include the sum of 12 cents he replied that it was standard procedure to just put in a figure such as this at the end

of the quoted price. He was then asked whether he did so in order to make it appear that he had really applied his mind to the figure. He replied, with rare candour, that that was indeed so.

He stated that despite not being listed on plaintiff's data base as a service provider he had, after having been awarded the tender, commenced work during March 2007. He was given an envelope containing the relevant passwords such as would enable him to access the plaintiff's computer system. He was reminded of Hennek's evidence that he could not have accessed the system without having obtained a specific password from Hennek, evidence which, I might add, was never disputed. He said that he did not think of disputing this evidence.

He stated that he was told to work in the office of the secretary of the CFO, Mr. Shepherd. He did not actually work in the CFO's

office itself despite this having been alleged in the particulars for trial. There was, he said, a spare computer in the secretary's

office. No key was necessary to access the secretary's office despite Mr. Shepherd's evidence to the effect that a special key was required never having been contested. He stated that he duly performed the work and achieved the requisite interface between the Venus and Hyperion systems. He contested the evidence of Hennek to the effect that there were probably less than ten experts in this field. He stated that he had learned about the systems through the Internet. He stated that Hennek was lying when he said that the interface allegedly achieved by himself in 2007 could still not be done in 2010. Hennek was lying because he was upset that he had not himself received the tender. The interface was to be seen at plaintiff's offices and he did not know where Hennek was looking if he could not find it.

The work took him approximately three to three and a half months. He worked approximately 6 hours a day, coming into the secretary's

office three to four times a week. During the course of this period he only saw Shepherd approximately three times. Once he had completed the work he prepared a report and handed it and his invoice personally to Shepherd. This averment, however, had never been put to Shepherd.

He stated that Shepherd was lying when he denied having seen or spoken to him because he was in effect covering his back because of the loss of the documentation.

He confirmed having thereafter been telephoned by Stander. He denied, however, that Stander had asked him for details concerning the work or services rendered by him. All Stander had wanted was an invoice. He did not tell Stander that he would ask his staff about the work because he had no staff. So too was Smith lying in alleging that he had told her that he could not recollect what work he had done. He conceded, however, that he did tell her that he could not recollect with whom he had worked at plaintiff's offices. He did so because he had forgotten Shepherd's name, despite having worked in his secretary's office for more than three months. He admitted having received the telefax (A14) from Smith. He did not think of responding to it. Asked whether a response with the requisite information would not have satisfied everybody he merely replied

“maybe”.

He said that he had never seen Adonis or Hoffert, despite the latter being in charge of the computer programs and despite his presence in plaintiff’s offices on the same floor for more than three months.

He stated that he could not provide an invoice because his computer had crashed. Despite it being standard procedure he had failed to make a back-up disc. His written letter of appointment from plaintiff had also got lost and he could not find it. He was referred in this regard to paragraph 1.16 of the particulars for trial. In that paragraph the following question had been asked, namely:

“Does the defendant intend to allege that it also has lost all other written communications, instructions, documentations and supporting paperwork relating to the services allegedly rendered by the defendant to the plaintiff?”

The answer to this question had been simply “no”.

Mazomba reiterated that he had indeed lost all the other documentation and placed the blame for that reply on the faulty cell phone connection between himself and Mr. Mkuhlu.

He stated further that he usually gave his documents to his accountant. Asked whether the accountant therefore had the documents

he replied that he did not know. Asked whether he had made inquiries about this from the accountant he said that the accountant had told him that he did not know if he had kept the documents. He then contradicted this immediately by saying that the accountant had told him that he had not got the documents. He denied having said anything about his accountant not knowing whether he had the documents.

He concluded his evidence by reiterating that he was not surprised that all the witnesses had denied knowing him because they were

covering up for their own negligence.

That then was the evidence which was led before me.

It would have been seen from the summary of the evidence set out above that the respective versions of the plaintiff and the defendant

are irreconcilable and mutually destructive. This being the case the approach to be adopted is that expressed in *National Employers General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (E) at 440D-G.

All of plaintiff’s witnesses, without exception, made extremely favourable impressions upon me. Indeed, no criticism of the manner in which they testified or of the content of their evidence could be advanced by Mr. Mkuhlu. None of plaintiff’s witnesses had any motive whatsoever to lie. Mazomba’s suggestion that they were doing so in order to save their own skins only has to be

stated in order to be rejected as ludicrous. Smith, for example, is an entirely independent witness who had nothing to gain by lying. Hennek too is an independent witness. The suggestion that he was lying concerning the achievement by Mazomba of the interface between the Venus and Hyperion systems cannot stand scrutiny. Hennek's company was awarded the tender in 2004 and is still engaged in working for plaintiff. Hennek himself is clearly a master in his field. Shepherd has since left the employ of plaintiff and he too would accordingly have no motive now to protect himself against allegations of negligence. In any event, his evidence that he had nothing to do with issues of payment puts paid to the suggestion that Mazomba personally handed him the invoice.

Stander and Weston, although still in the employ of plaintiff, were excellent witnesses who were clearly testifying truthfully as to events with which they were involved. Weston, who signed the EFT, impressed me as a highly intelligent man of integrity. His evidence as to how he came to sign the EFT was entirely clear and satisfactory.

Mazomba, on the other hand, was nothing short of a pathetic witness. As was submitted by Mr. Cole, his defence was built up incrementally

in order to meet the exigencies of the situation as plaintiff's case progressed. When the evidence is looked at in its totality it is clear that Mazomba's evidence is not only utterly improbable but is in fact a tissue of lies. It is utterly improbable, if not impossible, that, should the matter have been put out to tender as alleged by Mazomba, plaintiff would have no record whatsoever

thereof. On defendant's version every single scrap of evidence to do with the tender, not only the EFT, must have miraculously

disappeared leaving not a shred of evidence in that regard. In my view plaintiff's evidence establishes conclusively and beyond any doubt at all that there was no such tender. It is clear, in my view, that Mazomba's evidence that the contract was awarded to him in terms of a tender was nothing more than a belated and blatantly false attempt to counter the plaintiff's evidence to the effect that because the cost was allegedly in excess of R200 000,00 it would have had to be put out to tender.

It is also abundantly clear from the acceptable evidence of Smith and Stander that from the very beginning of the enquiries made on behalf of plaintiff Mazomba did everything he could to obfuscate the issue and to stonewall the investigations by alleging that he had no recollection of what services had been rendered by him nor of the person with whom he had dealt at plaintiff's offices. In this latter regard it is utterly improbable that he could have worked for three and a half months in the office of Mr. Shepherd's secretary and yet only have encountered Mr. Shepherd on approximately three occasions. It is equally improbable that thereafter, despite having furnished Mr. Shepherd with his report and invoice he would be unable to remember his name when asked about it. It is quite improbable that had defendant in fact been awarded the tender in respect of the work allegedly done by Mazomba and had Mazomba worked in the office of Mr. Shepherd's secretary in performing that work he would not immediately have informed either Stander or Smith of this. It is clear that his evidence that he worked in Shepherd's secretary's office is false.

Hennek's evidence also establishes conclusively that Mazomba's evidence that he achieved an interface between the Venus and Hyperion systems is false. Furthermore, Mazomba could not have gained access to the computer systems without obtaining Hennek's own password. Apart from anything else Mazomba would have the Court believe that he worked for over three months on the plaintiff's computers without Hoffert, who was in overall charge thereof, being aware of this.

Mazomba's further evidence that he lost his documents can also not stand scrutiny. His evidence that his computer crashed and that he could not therefore produce an invoice is also clearly false. Despite being a self acknowledged computer expert he failed to make a back-up disc, something which he conceded was standard procedure. It is furthermore clear that the amount of R880 654,12 claimed by defendant was clearly plucked out of thin air, the addition of the amount of 12 cents being a cynical attempt to strengthen the ostensible authenticity of the EFT.

In all the circumstances I have no hesitation in rejecting Mazomba's evidence in its entirety and in categorising Mazomba as an unmitigated liar. I am satisfied that he performed no work and rendered no services to plaintiff and that his claim in this regard was fictitious and fraudulent. It would appear that Mazomba must have had the assistance of at least one of plaintiff's employees in order to process the false claim. It is not necessary nor desirable to speculate in this judgment as to who that person or persons might have been. Whoever did assist Mazomba produced fictitious documentation which was, however, sufficiently convincing and authentic looking to satisfy Mr. Weston that the claim for payment was a valid one. The only reasonable inference to draw in the circumstances is that, far from plaintiff's employees being negligent, the person who assisted Mazomba in his fraudulent scheme destroyed all the supporting documentation so as to remove any trace of incriminating evidence. Had it not been for the discovery of a copy of the EFT in the banking section it might have been impossible to track down the perpetrators.

Be that as it may, Mr. Weston authorised the payment of that money to defendant in the bona fide but mistaken belief that the money was due for services rendered by defendant to plaintiff. In all the circumstances plaintiff has established, on a balance of probabilities, that it had no legal or natural obligation to make such payment and that defendant has accordingly been unjustifiably enriched at the expense of plaintiff without any cause whatsoever. In the circumstances the following order will issue:

"1. Defendant is ordered to repay to plaintiff the sum of R880 654,12.

2. Defendant is ordered to pay interest on the said sum calculated at the legal rate from 27 July 2007 until date of repayment.
3. Defendant is ordered to pay the costs of suit together with interest thereon calculated at the legal rate from a date 14 days

after taxation to date of payment, such costs to include:

3.1 the travelling and accommodation expenses of Brenden Hennek;

3.2 the travelling and accommodation expenses of Brian Shepherd;

3.3 the travelling and qualifying expenses of Loren Smith.

J.D. PICKERING

JUDGE OF THE HIGH COURT

Appearing on behalf of plaintiff: Adv. S. Cole

Instructed by Borman & Botha, Mr. Powers

Appearing on behalf of defendant: Adv. Mkuhlu

Instructed by Dullabh Attorneys, Mr. Wolmarans

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECGHC/2010/108.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/buffalo-city-municipality-v-zinala-unknown-topic-aecghc-2010>

Prepared on 12 October 2026 · Esheria