

SOUTH AFRICA / JUDGMENT

Lona Citrus (Pty) Ltd v Vutsela Iglobju Investments (Pty) Ltd (2045/24) [2025]

ZAMPMBHC 36 (13 May 2025)

[2025] ZAMPMBHC 36

COURT

Mbombela High Court, Mpumalanga

BEFORE

Montsho-Moloiwane

CASE / FILE NUMBER

2045/24

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IN THE HIGH COURT OF
SOUTH AFRICA
MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT)
CASE NO: 2045/24
REPORTABLE: YES / NO
OF INTEREST TO OTHER
JUDGES: YES/NO
REVISED: YES/NO
DATE: 13.05.2025
SIGNATURE

In

the matter between:

LONA
CITRUS (PTY)
LTD
Applicant
and
VUTSELA
IGLOBHU INVESTMENTS (PTY) LTD
Respondent

JUDGMENT

MONTSHO-MOLOISANE AJ

[1.] This matter came before Court by way of motion. In the Notice of motion, the Applicant seeks a monetary judgment against the Respondent in the following terms:

1.1. Payment of the sum of R 2 864 562.56c;

1.2. Interest on the said amount at prime rate plus 2% per annum from 01 March 2024 to date of payment in full;

1.3. Costs of suit.

[2.] The Respondent opposes the application, and denies any indebtedness to the Applicant.

Factual matrix

[3.] The contractual relationship between the Applicant and the Respondent commenced on or about 11 February 2024 at Sandton, Johannesburg,

Gauteng province, when the Applicant, represented by its director, Derek Sutton, and the Respondent, represented by its director, Mpho Maepa, entered into a Marketing Agreement (“the Agreement”), in terms of which the Respondent undertook to supply fruits which meet the relevant quality requirements and specifications, to be exported to another country, as determined and notified by the Applicant from time to time.

The Marketing Agreement

[4.] The express and material terms of the Agreement concluded by the parties were that:

4.1. the Respondent as the Supplier, agreed to appoint the Applicant to export and market the Respondent’s citrus fruit for the duration of the Agreement on the terms and conditions set out in Clauses 2.1 and 1.1.2 thereof;

4.2. in terms of Clauses 3.1 and 1.1.5 thereof, the Agreement commenced on the date of signature, and continued for the duration of the 2021 citrus season;

4.3. the Agreement would terminate when the volumes committed were packed and amounts owing by the Respondent as the supplier, to the Applicant, were paid in full, as contemplated in Clause 3.2 of the Agreement the Applicant undertook to pay for the packaging material and transport, relating to its Export Fruit, on behalf of the Respondent; and

4.4. furthermore, in terms of Clause 4.1 the Applicant would be entitled to recover the costs of the packing material and the costs of transporting the packaging material from the proceeds derived from the sale of the Respondent’s fruit, in terms of Clause 4.2;

4.5. in the event that amounts remained outstanding by the Respondent to the Applicant after deduction of the amounts due to the Applicant from the Respondent's fruit proceeds, the Respondent undertook to deliver a sufficient number of navel cartons to be packed at Tulima in order to settle the outstanding debt;

4.6. the Applicant undertook to pay to the Respondent advances in accordance with the terms set out in the annexure to the Agreement, namely R 4 000 000.00 (four million rand), to be disbursed in two tranches of R 2 000 000.00 (two million rand) each on 15 February 2021 and 15 March 2021, which advance would accrue interest at Prime rate plus 2%; and

4.7. the advances granted by the Applicant to the Respondent, together with the interest accrued thereon, would be recoverable by way of deductions by the Applicant from the proceeds derived from the sale of the Respondent's fruit at the rate of R 100.00 (one hundred rand), per carton.

[5.] As at 31 July 2022, the Respondent had not fully complied with the terms of the Agreement regarding all the payments that were due to the Applicant.

[6.] The Applicant and the Respondent subsequently concluded a Deed of Cession ("the Deed") at Nelspruit, on or about 10 August 2022.

The Deed of Cession

[7.] In terms of the Deed of Cession ("the Cession"), the Respondent ceded certain rights to the Applicant as the Cessionary.

[8.] The material terms of the Cession were that:

8.1. the Respondent acknowledged its indebtedness to the Applicant as at 31 July 2022, in the amount of R 3 794 797.25 (three million seven hundred ninety four thousand and seven hundred and ninety-seven rand and twenty-five cents) made up as follows:

8.1.1. Loan capital: R 1 783 893.23 c;

8.1.2. Packaging costs: R 1 565 234.70c

8.1.3. Interest on the outstanding balances: R 445 669.33c

8.2. in terms of Clause 1.8 of the Cession, the Respondent as the Cedent, wished to pack and market its produce through Karino Kooperasie Beperk ("Karino") for the 2022 citrus season, and potentially through Karino, the Applicant or another fruit exporter for the 2023 season ("the Future Exporter"), was willing to permit the Respondent to terminate the Marketing Agreement, subject to the debt being recovered directly from the sale of the Respondent's produce ("the Proceeds"), supplied to Karino during the 2022 season and supplied to the Future Exporter for the 2023 season by way of an out and out cession;

8.3. in terms of Clause 2.1, the Respondent irrevocably ceded and transferred to the Applicant its right, title and interest in and to such portion of the proceeds sufficient for the Applicant, as the Cessionary to recover as follows:

8.3.1. 40% of the debt during the 2022 citrus season from Karino (after settlement of the Respondent's debt owed to Karino); and

8.3.2. 60% of the debt during the 2023 citrus season from the Future Exporter.

8.4. Clause 2.5 stipulates that the Cession is an out and out Cession, and not a cession in securitatum debiti, and that the Applicant would become the owner and holder of the Respondent's rights to the Proceeds, and the Applicant, as the Cessionary, would thereby become the new creditor of Karino for the 2022 season and the Future Exporter for the 2023 season, who must henceforth render payment of the Proceeds directly and without delay to the Applicant until the debt is settled in full;

8.5. Clause 2.6 provides that the Cession would endure and be of force and effect until the Respondent's debt is settled in full;

8.6. In terms of Clause 2.7, interest on the debt would continue to accrue at Prime rate plus 2% until such time as the debt is fully repaid;

8.7. If the debt for whatever reason could not be recovered from Karino, and/or the Future Exporter, the Respondent, as the Cedent, would remain liable for any outstanding balances due to the Applicant as the Cessionary, as contemplated in Clause 2.8; and lastly;

8.8. The Certificate of account signed by the Applicant's director, reflecting the amount due, would be sufficient proof of the

Respondent's indebtedness in terms of Clause 5 of the Cession.

The Applicant's case

The Founding affidavit

[9.] The Applicant's case as pleaded in its Founding affidavit, relies on the Deed of Cession, in terms of which the Applicant agreed to permit the Respondent to terminate the Marketing Agreement. It is pleaded that:

9.1. the Applicant adhered to its obligations in terms of the Agreement, and that it paid for the packaging materials in respect of the

Respondent's fruit that was exported by the Applicant, as follows:

9.1.1. R 2 000 000.00 (two million) paid on 16 February 2021;

9.1.2. a further R 2 000 000.00 (two million) paid on 15 March 2021.

9.2. the sale of the Respondent's fruit that was harvested during the 2021 citrus season and exported by the Applicant, was insufficient to pay the amounts due by the Respondent in terms of the Marketing Agreement.

[10.] In terms of the statement of account reflecting all amounts advanced by the Applicant to the Respondent, or paid by the Applicant on the Respondent's behalf, and all amounts recovered from the proceeds of the Respondent's fruit, the Respondent was, as at 29 February 2024, indebted to the Applicant in the sum of R 2 864 657.56;

[11.] The Certificate of account signed by the Applicant's director, reflecting the amount of the Respondent's debt outstanding,

together with interest, constituted sufficient proof in terms of Clause 5 of the Cession.

[12.] In its Replying affidavit, the Applicant places emphasis on Clause 2.8 of the Deed of Cession, which unequivocally states that if the debt for whatever reason cannot be recovered from Karino and/or the Future Exporter, the Cedent, being the Respondent, would remain liable for any outstanding balance due to the Cessionary, being the Applicant.

[13.] The Respondent's indebtedness to the Applicant as at 29 February 2024, inclusive of interest accrued, is in terms of the Certificate

of account, as set out in Clause 5 of the Deed of Cession, the sum of R 2 864 657.56.

The Respondent's case

The Answering affidavit

[14.] The Respondent raised a Point in limine regarding Clause 1.8 of the Deed of Cession, in terms of which the parties agreed that the Marketing Agreement was terminated by the Deed of Cession.

[15.] It is in that regard contended that the Applicant's application is premature, as Clause 1.8 provides that a 14 (fourteen) days' notice of breach was to be given prior to any action or application being brought, and that no such notice was given to the Respondent.

[16.] It is further contended that it is nowhere stated by the Applicant that the Respondent failed to deliver its production to either Karino or the Future Exporter as a result of which the Applicant could not become entitled to the proceeds of such delivery;

[17.] That as transfer of the right to claim performance was ceded to the Applicant, the Applicant was obliged to recover the proceeds from the Debtor, being Karino;

[18.] The Deed of Cession specifically provides that any indebtedness due by the Respondent to the Applicant would be settled by means of the harvest delivered by the Respondent. The Respondent's contention is that there is no indication as to when and how the indebtedness was to be paid, save and except for the delivery of the Respondent's harvest for the 2022 and 2023 citrus season; and

[19.] That Applicant failed to state the amount or extent of harvest delivered (if any), and there is therefore no basis to be made that any amount which may be due is in fact payable.

[20.] On the merits of the Applicant's case, the terms of the Marketing Agreement are admitted, but the Respondent contends that the total amount spent on packaging and transport cannot be admitted or denied, and puts the Applicant to the proof thereof, without furnishing any facts in rebuttal.

[21.] It is further averred that as at 22/1/2022, the Respondent delivered 56 017 (fifty-six thousand and seventeen) cartons of fruit, based on the fact that the loan of the Applicant would be reduced by R 100.00 (one hundred rand) per carton, which equates to R 5 602 700.00 (five million, six hundred and two thousand, seven hundred rand). It is further contended that, the volumes delivered by the Respondent were more than sufficient to settle the outstanding loan.

[22.] On this basis, it is contended that the Respondent denies its indebtedness to the Applicant, as well as the Certificate of account. It is further contended that in any event, the Certificate of indebtedness does not confirm that the debt is payable. The response regarding the indebtedness is a bare denial, and no evidence has been placed in the Answering affidavit in order to rebut the prima facie probative value of the said Certificate, as contemplated in Clause 5 of the Deed of Cession.

The

Issues

[23.] The issues for determination are:

23.1. firstly, whether the Point in limine regarding the Applicant's failure to serve the Respondent with a notice of breach, as stipulated in the Marketing Agreement, which was terminated, is dispositive of the application;

23.2. secondly, whether based on the transfer of the Respondent's rights to the Cessionary (the Applicant), in terms of the Deed of Cession, the latter was obliged to recover the proceeds from Karino, and not from the Respondent; and

23.3. lastly, whether the amount of indebtedness reflected on the Certificate of account constitutes proof of the debt owing, or even payable by the Respondent.

Evaluation

[24.] It is common cause that the Marketing Agreement was terminated in terms of Clause 1.8 of the Deed of Cession, signed by both parties' directors on their behalf, on 10 August 2022.

[25.] In my view, there is therefore no legal basis for the Respondent to raise a point in limine based on an Agreement which has been terminated.

[26.] It appears from the Respondent's affidavit, that the terms and conditions of the Deed of Cession are not in dispute, and that in fact, both the director of the Applicant and that of the Respondent, agreed thereto by affixing their signatures, on 10 August 2022.

[27.] Regarding the amount of indebtedness reflected on the Certificate of indebtedness, the response set out in the Answering affidavit is that the figures were given by the Applicant in good faith. In my view, therefore, Clause 5 of the Cession remains binding on the parties.

[28.] It is evident from the responses in the Answering affidavit, that no facts have been pleaded or placed as evidence in rebuttal of the contents of the Founding affidavit.

[29.] It is appropriate to remark that in considering whether the Applicant has established the indebtedness of the Respondent, regard has to be had to the case pleaded by the parties, and the applicable legal principles, which I address in the ensuing paragraphs.

Applicable Legal Principles

[30.] It is important to state that this Court is bound by the stare decisis legal principle, regarding motion proceedings and litigation in general.

[31.] The Applicant's Counsel correctly contended, that the manner of establishing facts in motion proceedings in which final relief is sought, is set out in *Plascon-Evans Paints Ltd v Van Riebeck Paints (Pty) Ltd*[1]. In that case the Court held that: "...where in proceedings on notice of motion, disputes of facts have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the Applicant's affidavits which have been admitted by the Respondent, together with the facts alleged by the Respondent, justify such an Order".

[32.] Both the Applicant's and the Respondent's Counsel correctly referred this Court to the judgment of *Die Dros (Pty) Ltd and Another v Telefon Beverages CC and Others*[2], where the *Plascon-Evans* rule was reiterated and applied.

[33.] In upholding the stare decisis principle, I find it appropriate to rely on the legal on the above quoted judgment, and the recent judgment of *Skog NO and Others v Agullus & Others*[3], where the Court held as follows:

"It is trite that in motion proceedings, the affidavits filed in the application constitute evidence. In such proceedings, the norm is that affidavits are limited to three sets. For this reason, utmost care must be taken to fully set out the case of a party on whose behalf an affidavit is filed"[4].

Certificate of indebtedness

[34.] The applicable legal principle regarding the probative evidential value of the Certificate of indebtedness is set out by Miller JA in *Senekal v Trust Bank of Africa Ltd*[5] as follows:

"The Certificate of indebtedness is prima facie proof of the substance of its contents in litigation[6]" and that:

"The inquiry then, is... whether at the end of the case, the prima facie evidence afforded by the Certificate had been so disturbed as to prevent its becoming sufficient proof"[7].

[35.] It is trite that at the end of the case, when all the evidence, including the Certificate is in, the Court must decide whether the

party upon whom the onus rests has discharged it on a proper balance of probabilities[8].

[36.] The law regarding the Certificates of indebtedness as set out by then Appellate Division in the Senekal case supra has been settled and was approved and summarised in the case of Bank of Lisbon International Ltd v Venter[9] as follows:

36.1. A Certificate of indebtedness constitutes prima facie proof of the amount owing by the debtor;

36.2. A creditor who relies upon a Certificate of indebtedness is not required to present evidence in support of the Certificate; and

36.3. The debtor is thus required to put up evidence or facts in order to rebut the prima facie probative value of the Certificate. If this is not done, the Certificate alone is sufficient proof of the creditor.

Findings

[37.] This Court is required to take cognisance of all evidence, and having regard to the facts set out by the Applicant in its Founding affidavit, which were responded to by mere denials, I find that the Respondent has failed to place evidence in its Answering affidavit in rebuttal of the contents of the Founding affidavit. The facts set out in the Founding affidavit thus become sufficient proof in the absence of any factual rebuttal thereof.

[38.] I agree with the Applicant's Counsel that a Court should not close its eyes to denials which contain no substance, and which do not raise a genuine dispute of fact, and that the Court should reject allegations that are clearly untenable on the papers. The Applicant's Counsel correctly referred this Court to the case of Wightman t/a JW Construction v Headfour (Pty) Ltd and Another 2008 (3) 371 (SCA), where Heher JA held that:

"[13] A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter".

[39.] I find that the terms and conditions set out in the Deed of Cession became binding on the Applicant and the Respondent upon the signing thereof on 10 August 2022.

[40.] I can find no reason why in such circumstances, the contents of the Certificate of account which the parties agreed to in Clause 5 of the Deed of Cession, is to be disregarded as contended by the Respondent's Counsel, in the absence of any facts rebutting them.

[41.] In the circumstances I find that there is substance in the Applicant's contention that the amount of the Respondent's indebtedness is as set out in the Certificate of account in terms of Clause 5 of the Deed of Cession, which constitutes prima facie evidence of indebtedness.

[42.] I am therefore satisfied that the Applicant has established the Respondent's indebtedness, based on the terms of the Deed of Cession on a balance of probability.

[43.] I also find that the rate of interest accruable on the debt payable, as agreed to by the parties on 10 August 2022 is prime rate plus 2%, as set out in Clause 2.7 of the Deed of Cession.

ORDER

[44.] In the result, the Court makes the following order:

44.1. The Respondent is liable to pay to the Applicant, the sum of R 2 864 657.56c;

44.2. Interest on the said amount at the prime rate plus 2% per annum, from 01 March 2024 to date of payment in full; and

44.3. Costs of suit on a party and party scale.

L.M. MONTSHO-MOLOISANE

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

Date heard

: 13 February 2025

Judgment

delivered

:

Electronically circulation to all parties : 13 May 2025

Appearances

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[1] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634 E-635 C

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- [2] Die Dros (Pty) Ltd and Another v Telefon Beverages CC and Others 2003
(4) SA 207 (CPD)
- [3] Skog NO & Others v Agullus & Others 2024 (1) SA 72 (SCA)
- [4] At paragraph 18 of the Judgment
- [5] Senekal v Trust Bank of Africa Ltd 1978 (3) SA 375 (A)
- [6] At 382 C-D
- [7] At p383 B
- [8] See: Senekal case supra, at 382 G
- [9] Bank of Lisbon International Ltd v Venter 1990 (4) SA 463 (A) at p481 F-H; 483 B
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