

SOUTH AFRICA / JUDGMENT

Madhlopa and Thenga Incorporated v Rustenburg Local Municipality (1686/2021) [2023] ZANWHC 123 (20 July 2023) [2023] ZANWHC 123

COURT

North West High Court, Mafikeng

BEFORE

A H Petersen

CASE / FILE NUMBER

1686/2021

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IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION -
MAHIKENG
CASE NO.: 1686/2021

Reportable:	YES / NO Circulate
to Judges:	YES / NO Circulate
to Magistrates:	YES / NO Circulate
to Regional Magistrates:	YES / NO In

the matter between:

MADHLOPA
& THENGA INCORPORATED PLAINTIFF
and
RUSTENBURG
LOCAL MUNICIPALITY
DEFENDANT

Delivered: This judgment
was handed down electronically by circulation to the parties'
representatives via e-mail. The date and time for hand-down is
deemed to 15h30PM on 20 July 2023.

ORDER

(i)

The application for
summary judgment is dismissed.

(ii)

Costs shall be costs in
the cause.

JUDGMENT

PETERSEN J

Introduction

[1] This is an opposed application for summary judgment.

[2] The plaintiff seeks summary judgment against defendant in the following terms:

1. Payment in the amount of R447 798.28 (i.e. R1 417 326.66 less payment made);
2. Interest at 7% per annum a tempore morae to date of final payment;
3. Cost of suit;
4. Further and/or alternative relief."

Uniform Rule 32 of the High Court Rules

[3] Uniform Rule 32, relevant to the present matter, provides as follows:

"32 Summary judgment

(1) The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only—

...;

(b) for a liquidated amount in money;

...

together with any claim for interest and costs.

(2)

- (a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.
- (b) The plaintiff shall, in the affidavit referred to in subrule (2)(a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.
- (3) The defendant may—
 - (b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.
 - (4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.
 - (5) If the defendant does not find security or satisfy the court as provided in paragraph (b) of subrule (3), the court may enter summary judgment for the plaintiff.

...”

Discussion

- [4] For purposes of this application, the plaintiff has not made available the summons and particulars of claim on which the action is based. In that regard this Court is hamstrung from appreciating the cause of action on which the action is based. Notwithstanding this anomaly, I proceed to consider the requirements of rule 32.
- [5] Rule 32(2)(a) requires of a plaintiff, within 15 days after the date of delivery of the defendant's plea to deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or any other person who can swear positively to the facts. The defendant's plea was filed on 17 March 2022. The plaintiff delivered a notice of application for summary judgment on 12 April

2022. The said notice together with an affidavit made by the attorney who handled the plaintiff's collection portfolio on 11 April 2022, who states that he can swear positively to the facts, was to be filed by 8 April 2022. No application for condonation for the late filing of the application for summary judgment has been brought by the plaintiff. On this basis alone the application stands to be dismissed.

[6] The application suffers further shortcomings. Rule 32(2)(b) requires of the deponent to affidavit envisaged in rule 32(2)(a) to explain in brief why the defence pleaded by the defendant does not raise a triable issue, which the plaintiff may with reference to any documents verify the cause of action and the amount claimed. The affidavit, which deals with a seriatum response to the respondent's plea falls gravely shy of the requirements of rule 32(2)(b). The extent of the affidavit relevant to rule 32(2)(b) reads as follows:

"1 ...

2. I have access to all the Applicant's files and records pertaining to the Respondent and have acquainted myself with contents thereof insofar as may be necessary for the purposes of the application.
3. The facts herein contained are, save where otherwise stated or where the converse appears from the context, within my own personal knowledge and are both true and correct. I confirm that I have perused all the relevant documentation in this matter prior to deposing to this affidavit.
4. I can swear positively to the facts contained in the Applicant's Summons, verify the cause of action and that the Respondent is liable to the Applicant in the amount of R447 798.28 (Four Hundred and Forty-Seven Thousand Seven Hundred and Ninety-Eight Rand Twenty-Eight Cent).
5. Copy of tax invoices and statement are attached hereto marked annexure "B" to "J", respectively. The document upon which the Applicant relies are liquid documents and amount are easily ascertainable.
6. I have perused the Respondent's plea and submit that the Respondent failed to put a bona fide defence to the Applicant's claim. I shall deal with disputed grounds of the plea."

[7] The very essence of a summary judgment application is to place the Court in a position to summarily dispense with an action that need not detain a trial court, on the basis that it does not raise a genuine triable issue. Save for engaging the defendant's plea in its affidavit, the plaintiff's allegations as set out in paragraph

[6] supra which constitutes a parroting of the provisions of rule 32(2)(a) and (b), leaves this Court at a disadvantage in appreciating why summary judgment should be granted in favour of the plaintiff. On this basis too, the application stands to be dismissed.

[8] For the reasons stated aforesaid, I do not deem it prudent to deal with the grounds of opposition to summary judgment raised by the defendant.

[9] The application for summary judgment accordingly stands to be dismissed.

Costs

[10] In my view the appropriate costs order should be costs in the cause.

Order

[11] The following order is accordingly made:

A H PETERSEN

JUDGE OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

COUNSEL FOR THE PLAINTIFF: ADV. T KWAPE Instructed by: Madhlopa & Thenga Attorneys Inc
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ATTORNEY FOR THE DEFENDANT: MR WM KEENY Instructed by: Van Velden Duffey Inc c/o
M.E. Tlou Attorneys 43 Baden Powell Street Golfview MAHIKENG Date of hearing: 26 MAY 2023
Date of judgment: 20 JULY 2023

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Prepared on 12 October 2026 · Esheria