

SOUTH AFRICA / JUDGMENT

Mosepelo Trading CC v City of Tshwane Metropolitan Municipality (012524/2024) [2025] ZAGPPHC 519 (23 May 2025)

[2025] ZAGPPHC 519**COURT**

North Gauteng High Court, Pretoria

BEFORE

Retief

CASE / FILE NUMBER

012524/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case No: 012524/2024

(1)

REPORTABLE :no

(2)

OF INTEREST TO OTHER JUDGES :no

(3)

REVISED:

DATE

23 MAY 2025

SIGNATURE

In the matter between:

MOSEPELO

TRADING CC

Plaintiff

and

THE

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Defendant

This

judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines.

The date for handing down is deemed to be 23 May 2025.

JUDGMENT

RETIEF J

INTRODUCTION

[1] These short reasons follow after hearing argument in a summary judgment application in terms of uniform 32. The plaintiff in its notice seeks judgment against the defendant in an amount of R 7,738,616.06 [claimed amount] together with interest and costs . The defendant opposes the relief and filed opposing papers as envisaged in terms of uniform rule 32 (3)(b).

[2] At the date of the hearing though and, in argument, counsel for the plaintiff rather now moved for judgment for a part of the claimed

amount, being an amount of R 2,576,332.97 together with interest and costs. He contended that this was possible and in so doing, relied on an allegation in the particulars of claim read together with a report referred to as POC3.1 to bolster his argument. He argued that POC3.1 was an acknowledged of indebtedness made by the defendant in the sum of R 2,576,332.97 arising from the pleaded

facts. In consequence then, it was argued on behalf of the plaintiff that it was entitled to claim for judgment in part and that the defendant could then be granted leave to defend the balance of the claimed amount as envisaged in terms of rule 32(6)(b)(iii)[1].

[3] In short, the defendant in its plea admits the content of the report POC3.1 but denies that it constitutes an acknowledgment of debt. It furthermore argues that the amount of R 2,576,332.97 as reflected in POC3.1, is not clearly distinguishable from the claimed amount. It argues that the plaintiff relies on POC4 being a schedule of claimed invoices in support of the claimed amount and that no lis has been pleaded nor established between POC4 and the facts giving rise to POC3.1 and, furthermore that the amount of R 2,576,332.97 is not even clear from POC4. Therefore it contends that the amount now claimed in argument is not distinguishable and that it cannot be separated from the claimed amount. A clear separation and how and when the R 2,576,332.97 arose is also a pivotal enquiry as the defendant has raised a special plea of prescription.

[4] This requires a brief look at the pleaded case and POC3.1 and POC4.

DISCUSSION

[5] it is common cause that subsequent to a tender process the plaintiff and the defendant entered into a written Service Level Agreement [SLA] on the 8 May 2017 in terms of which the defendant would hire vehicles, machinery and equipment from the plaintiff during the period April 2017 to August 2021. The successful tender was confirmed via a letter dated the 31 March 2017 addressed to the plaintiff headed “TENDER FOR THE CORPORATE HIRE OF GENERAL CONSTRUCTION VEHICLES, YELLOW PLANT, REFUSE REMOVAL VEHICLES,

SPECIALISED VEHICLES, EQUIPMENT AND MACHINES FOR THE CITY OF TSHWANE”. The subsequently signed SLA was attached to the particulars of claim as POC2. The only express term of the SLA pleaded was that the tender rates would be non-firm prices subject to escalation.

- [6] Thereafter and on the 27 July 2021, just before the expiration of the contract term, the plaintiff refers to a correspondence it received from the defendant namely POC3 which is headed “FEEDBACK OF MATTERS RAISED BY CONTRACTORS AND SUB-CONTRACTORS IN RESPECT OF LANDFILL FEES”. No mention of landfills nor how it arises in respect of the SLA is pleaded.
- [7] Therefore, the relevance of POC3 and its link with the pleaded facts pertaining to the SLA in support of the payment of the claimed amount is unclear. Upon a reading of POC3, it was clear that it was addressed to the plaintiff to inform it that the Mayoral Committee of the defendant had taken certain decisions the previous month on the 18 May 2021 relating to, inter alia, how the plaintiff was to pay its landfill fees to the defendant. POC3.1 relied on by the plaintiff was a report tendered to the Mayoral Committee.
- [8] The content of POC3 now placed POC3.1 in context. The purpose of the report at POC3.1, was to request the Mayoral Committee to, inter alia, nominate the City Manager to negotiate with waste contractors and sub-contractors. The report, in essence was a means to consider the City's financial exposure amidst a waste service disruption crisis. In this way, a recommendation to write-off of the landfills fees as against sub-contractors invoice was tabled. The resolutions adopted by the Mayoral Committee in no way resolved that any of the amounts mentioned in the tables used in such report as an illustration were, as a fact an acknowledgment of its debt to each such sub-contractor mentioned and that such should be paid to them. Resolution 3 merely noted that sub-contractors were owed money.
- [9] Following from the accepted recommendations recorded in POC3.1 the July 2021 letter, POC3, followed as a means to inform the plaintiff that landfill fees were, as a fact, to be written-off and deducted from its invoices upfront. The defendant in POC3 gave an undertaking that its corporate finance department would be preparing individual statements to each sub-contractor, ostensibly including the plaintiff, indicating what had been resolved by the council. No such individual statement prepared by the corporate finance department has been attached by the plaintiff to support any amount to its particulars of claim. Furthermore, it is unclear from the pleaded particulars whether these invoices refer to the monthly invoices raised in terms of paragraph 10.4 of the SLA or are those relied on in POC4. Paragraph 10.4 of the SLA too is not pleaded nor the plaintiff's obligation to pay landfill fees in terms of the SLA.
- [10] The plaintiff's pleaded case relying on the SLA as merely hiring equipment and vehicles and how set off of landfill obligations by it, now arises and relevant to the claimed amount confusing.

CONCLUSION

[11] POC3.1 is not an acknowledgment of debt on the pleaded facts. On the pleaded facts it is impossible to clearly sever the amount and origin of the R 2,576,332.97, at this stage of the litigious process as pleaded and argued. The defendant possesses a bona fide defence to the claimed amount and to the part thereof claimed in summary judgment proceedings. This too, is stated bearing

in mind that if any uncertainty exists, as in this case, it is impossible, at this stage, to discern whether any of the amounts

which make up the R 2,576,332.97 are reflected in the invoices as summarised in POC4 and if so, whether they have then, as argued, not prescribed. The defendant's material grounds relied on to demonstrate a bona fide defence succeeds. The application for summary judgment in part, must fail.

[12] The following order:

1. The application for summary judgment is dismissed.
2. The defendant is granted leave to defend the plaintiff's claim.
3. Costs to be costs in the cause.

L.A. RETIEF

Judge of the High Court

Gauteng Division

Appearances:

For the Plaintiff: Adv NG Louw Cell: 073 352 2914 Email: nlouw@circle.co.za Instructed by attorneys: Albert Hibbert Attorneys For the Defendant Adv TM Makola Instructed by attorneys: Kutumela Sithole Attorneys Inc. Date of hearing: 21 May 2025 Date of judgment: 23 May 2025

[1] Meyer Hire Ltd t/a Meyer Hire v Filzo Enterprises (Pty) Ltd and Others (621/2023) [2023] ZAECKMHC 96 (12 September 2023)

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