

SOUTH AFRICA / JUDGMENT

Timac Agro South Africa (Pty) Ltd v Greyling (2054/2024) [2025] ZANWHC 105 (24 June 2025)

[2025] ZANWHC 105

COURT

North West High Court, Mafikeng

BEFORE

T Masike

CASE / FILE NUMBER

2054/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST

DIVISION, MAHIKENG

CASE

NO.: 2054/2024

Reportable:

YES/NO

Circulate

to Judges: YES/NO

Circulate

to Magistrates: YES/NO

Circulate

to Regional Magistrates: YES/NO

In the matter between:

TIMAC AGRO SOUTH

AFRICA (PTY) LTD

APPLICANT

[REG. NR.:

2011/005705/07]

And

BAREND CHRISTIAAN

GREYLING

RESPONDENT

[ID 8[...]]

ORDER

(i)

Prayer (a) of the notice of motion of the

applicant is amended to
read as follows:

“The

respondent be ordered to pay the applicant R 2 660 314.01 (Two

Million Six Hundred and Sixty Thousand, Three Hundred and Fourteen

Rand and One Cent)”

(ii)

The respondent is to pay the applicant R 2

660 314.01 (Two Million Six Hundred and Sixty Thousand, Three Hundred

and Fourteen Rand

and One Cent).

(iii)

The respondent is to pay interest on the

amount in (ii) supra

calculated at a rate of 1% per month from 31 May 2023 compounded
monthly.

(iv)

The respondent is to pay the costs of the

application on an attorney and client scale.

JUDGMENT

MASIKE AJ

INTRODUCTION

- [1] The applicant in this matter instituted motion proceedings against the respondent and sought monetary judgment in an amount of R 2 677 339.69 (Two Million Six Hundred and Seventy – Seven Thousand Three Hundred and Thirty – Nine Rand and Sixty – Nine Cents) being in respect goods sold and delivered to the respondent by the applicant.

FACTS

- [2] The facts of this matter fall within a fairly narrow compass. On or about 16 September 2022 and at Sannieshof, alternatively Centurion, the applicant, duly represented by an authorized agent and the respondent concluded a written agreement the terms of which were amongst others that the applicant undertook to provide and supply fertilizer and/or ancillary goods to the respondent from time to time at the request of the respondent or his agent.
- [3] It was a specific term of the agreement that the respondent must pay the applicant within 180 (One Hundred and Eighty) days from the date of delivery of the goods. The applicant was entitled to charge interest at a rate of 2% above the prime interest rate per month charged by the applicant's bankers from time to time calculated from the date on which payment by the respondent becomes due until the date of payment in full. The applicant charged the respondent
- compound interest at a rate of 1% per month (12% per annum) compounded monthly.
- [4] If at any time the respondent disputes any portion of or all fees and charges due by him to the applicant in terms of a statement delivered by the applicant to the respondent, the respondent must notify the applicant in writing within 7 (seven) days from date of receipt of the statement specifying in reasonable detail the reasons for disputing the statement.
- [5] If the respondent failed to pay any amount due to the applicant on or before the due date then the whole amount in respect of all goods and services rendered by the applicant to the respondent would become immediately due and payable regardless of the due date for payments of such amounts.
- [6] The applicant complied with the terms of the agreement and delivered the fertilizer and ancillary goods to the respondent. Invoices were issued to the respondent by the applicant. The full amount in terms of the sale orders became due and payable on 31 May 2023.
- [7] It is the case of the applicant that on 25 April 2023, the respondent at Sannieshof, signed a written acknowledgement of debt. The respondent acknowledged that he is indebted to the applicant in the amount of R 2 999 967.00 together with further interest and costs.
- [8] The respondent denies that the acknowledgement of debt is applicable. It is the case of the respondent that the applicant never signed the acknowledgement of debt and therefore not accepted. The defence of the respondent is based on a cession agreement entered into between the applicant and the respondent on or about 29 September 2022.
- [9] The respondent in his answering affidavit, stated that the applicant received payment from NWK and OVK in terms of the cession agreement. The respondent undertook to provide proof of payment in a supplementary affidavit.

- [10] The applicant in reply does not deny that it received payment from some of the debtors of the respondent. The applicant, however, asserts that all payments received on the account of the respondent are reflected in the statement annexed to the founding affidavit of the applicant except for one payment of R 7 025.68 received from OVK on 7 December 2023.
- [11] The applicant in its replying affidavit stated that at the hearing of the matter, the applicant would request the court to permit the applicant leave to amend prayer 1 of the notice of motion by substituting the amount of R 2 677 339.69 with R 2 660 314.01.
- [12] It is the case of the respondent that there is a dispute of fact. The respondent asserts that the applicant claims that he has failed to make payment for the outstanding monies. The respondent denies that the applicant is entitled to all the monies claimed, yet the applicant deems it fit to institute motion proceedings instead of action proceedings to recover the debt which it alleges is due and owing.

THE LAW

- [13] The incidence of the burden of proof is a matter of substantive law. It denotes the duty which is cast on a particular litigant of finally satisfying the court that he is entitled to succeed in his claim or defence as the case may be. The burden of proof never shifts. (See: *Cecilia Goliath v Member of the Executive Council for Health, Eastern Cape* (085/2014) [2014] ZASCA 182 (25 November 2014) at para 8 and 10).

ANALYSIS

- [14] The respondent in his answering affidavit at paragraph 16 states as follows: “I now turn to deal with the allegations made by the Applicant in the Founding Affidavit. Failure to deal with any allegation made is not to be construed as an admission.”
- [15] The respondent has not grappled with some of the allegations made in the founding affidavit of the applicant in particular that the agreement was entered into by the parties on 16 September 2022 and that the applicant performed in terms of the agreement. The respondent in answer to those allegations states that he denies that the agent was duly authorised to conclude any written agreement with the applicant on his behalf. He disputes knowledge of the terms of the agreement. The applicant in reply to this averment states that the respondent acted in person when the agreement was concluded.
- [16] In my view, the respondent has not disturbed the case of the applicant so far as it relates to the agreement entered into by the parties on 16 September 2022 and that the applicant performed in terms of the agreement. If the respondent in his answering affidavit fails to admit, or deny, or confess and avoid, allegations in the applicant’s founding affidavit. The court will, for purposes of the application, accept the applicant’s allegations as correct. (See: *Moosa v Knox* 1949
- (3) SA 327 (N) at 331).

- [17] I am consequently satisfied that the applicant issued four invoices to the respondent for delivery of the fertilizer and ancillary goods. This is an aspect raised in the founding affidavit of the applicant that the respondent failed to address. I am further satisfied with the contents of the statement of account for the respondent's ledger account as reflected in annexure "FA6" (the statement of account). This is an issue raised in the founding affidavit of the applicant that the respondent has not addressed in his answering affidavit.
- [18] The applicant stated that the respondent made sporadic payments to the applicant totalling R 322 627.31. The respondent in response to this stated that the applicant received payment from NWK and OVK in terms of the cession agreement. I understand the defence of the respondent to be that he denies being indebted to the applicant in the amount of R 2 677 339.69. I further understand the defence of the respondent to be that the applicant sent the cession to the debtors of the respondent and the applicant received payment which it failed to disclose.
- [19] Considering the defence raised by the respondent, it was incumbent on the respondent to have submitted proof of the payment that he alleged had been made to the applicant (See: Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (In Liquidation) [1997] ZASCA 94; 1998 (1) SA 811 (SCA) at para 823D).
- [20] The respondent stated in his answering affidavit that the proof of payment would be provided in a supplementary affidavit, no such affidavit has been filed.
- [21] An affidavit is not a pleading. A respondent cannot content himself in his answering affidavit with bare or unsubstantiated denials unless there is no other way open for the respondent and nothing more can be expected of him. The mere allegation by the respondent of the existence of the dispute of fact is not conclusive of such existence. (See: Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1164); Wightman t/a JW Construction v Headfour (Pty) Ltd and Another [2008] ZASCA 6; 2008 (3) SA 371 (SCA) at 375G (Wightman)).
- [22] In Wightman at 375G, Heher JA writing for the court stated as follows:
- "A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed."*
- [23] In National Director of Public Prosecutions v Zuma (573/08) [2009] ZASCA 1 (12 Jan 2009) at para 26 Harms DP writing for the court stated the following:
- "Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the*

facts

alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers." (My emphasis)

- [24] The respondent in his answering affidavit at paragraph 9.4, refers to a letter marked "BC 2" dated 7 August 2024. In this letter, the respondent admitted the debt owing to the applicant as R 2 677 339.69. The respondent proposed to settle this amount in quarterly instalments of R 500 000.00 which would commence on or before 31 December 2024 until the debt and costs are paid in full.
- [25] The respondent in his answering affidavit at paragraph 10, stated that he revokes and withdraws the settlement proposal as the applicant is not entitled to rightly receive these monies. The argument of the respondent is based on the alleged payments that the applicant received from NWK and OVK.
- [26] The applicant in reply stated all payments received on the account of the respondent are reflected in the statement of account annexed to the founding affidavit except for one payment of R 7 025.68, this payment was received by the applicant from OVK on 7 December 2023. The respondent did not put up a further affidavit to contradict the averment made on behalf of the applicant.
- [27] The general assertion by the respondent that the applicant is not entitled to the monies it claims must be held to amount to a bare denial. The respondent, in his own words, stated he would provide proof of payment made to the applicant in a supplementary affidavit. That supplementary affidavit was never filed, counsel for the respondent at the hearing of the matter did not tender to hand up the proof of payment from the bar. In my view, the respondent appreciated that the facts to counter what was stated on behalf of the applicant were within his knowledge and he was able to provide an answer (or countervailing evidence) but, instead of doing so, rested his case on a bare or ambiguous denial. In such an instance the court will generally have difficulty in finding that the test for a real, genuine and bona fide dispute of fact is satisfied (See: Wightman at 375G – I).

AMENDMENT TO THE CLAIMED AMOUNT

- [28] Counsel for the applicant at the hearing of this matter moved an application from the bar for amendment of the claimed amount from R 2 677 339.69 to R 2 660 314.01, the difference being as a result of the payment received by the applicant from OVK on 7 December 2023 in the amount of R 7 025.68. Counsel for the respondent did not object to the application and I see no reason not to grant the application.

COSTS

- [29] The applicant urged the Court to grant costs on an attorney and client scale as contained in clause 18.2 of the agreement and as well contained in clause 7.2 of the acknowledgement of debt.
- [30] An acknowledgement of debt (AOD) is a written agreement where a debtor admits they owe a specific amount of money to a creditor and promises to repay it, often in installments. In my view, the AOD does not need to be signed by the creditor for it to be valid, it is the signature of the debtor which is a requirement. The contention by the respondent that the AOD is not applicable because the applicant did not sign it, is in my view misplaced and bad in law.
- [31] From the reading of the AOD signed by the respondent, the respondent acknowledged being liable to the applicant for the payment of R 2 999 967.00. The respondent indicated the reason he is liable to the applicant is because he bought fertilizer from the applicant during the season 2022/2023 of which the aforesaid amount is still owing and due. The respondent further agreed that he is bound by the conditions set out in the annexure attached to the AOD.
- [32] In terms of the annexure attached to the AOD, the respondent was to have paid the amount of R 2 999 967.00 on or before 31 May 2023. In terms of clause 7.2 of the AOD, the respondent is liable for collection costs in relation to the principal debt. Legal costs will be calculated on the attorney – and – client scale.
- [33] Parties should comply with contractual obligations that have been freely and voluntarily undertaken. (See: *Barkhuizen v Napier* (CCT72/05)
- [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) (4 April 2007) at para 57).
- [34] I am satisfied that the applicant has made out a proper case for the relief sought.

ORDER:

- [35] Resultantly, the following order is made: -

“The respondent be ordered to pay the applicant R 2 660 314.01 (Two Million Six Hundred and Sixty Thousand, Three Hundred and Fourteen

Rand and One Cent)”.

(ii) The respondent is to pay the applicant R 2 660 314.01 (Two Million Six Hundred and Sixty Thousand, Three Hundred and Fourteen Rand and One Cent)”

(iii) The respondent is to pay interest on the amount in (ii) supra calculated at a rate of 1% per month from 31 May 2023 compounded monthly.

T MASIKE

ACTING JUDGE OF THE HIGH COURT SOUTH AFRICA,
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE FOR HEARING

14 MARCH 2025

DATE OF

JUDGMENT

24 JUNE 2025

FOR APPLICANT

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INSTRUCTED BY

J W BOTES INCORPORATED

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