


**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 118674/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
21 Aug. 2024	
DATE	SIGNATURE

In the matter between:

**AKANI SIMBINE**

First Applicant

**PEET VAN ZYL**

Second Applicant

**WAYDE VAN NIEKERK**

Third Applicant

and

**NOBANTU STEEL (PTY) LTD**

First Respondent

**SIZIWE KHUMALO**

Second Respondent

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 21 August 2024.

Key words: Monetary judgment

Mini summary: an acknowledgment of debt and undertaking to pay was signed in favour of the applicants by the respondents. The respondents failed to abide by the payment terms set out in the acknowledgment of debt and undertaking to pay. A monetary judgment order granted in conjunction with ancillary orders that the second respondent be compelled to transfer shareholding held by her in the first respondent to the applicants to perfect a pledge of cession of shares granted by the second respondent to the applicants. Thirdly an order that the first respondent be compelled to deliver the book debts of the first respondent to further perfect the pledge and cession of book debt granted by the first respondent to the applicants.

Held- No dispute of fact in respect of the amount outstanding-Legal principles restated.

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## JUDGMENT

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Mudau, J:

### *Introduction*

- [1] This is an application for a monetary judgment in an amount of R1 225 250.00 together with interest thereon at the agreed rate of 25.9% per annum from date of failure to pay until date of final payment, in conjunction with ancillary relief that the second respondent, Sizwe Khumalo ("Khumalo") be compelled to transfer shareholding held by her in the first respondent, Nobantu Steel (Pty) Ltd ("Nobantu Steel"), to the applicants in order to perfect a pledge of cession of shares. Lastly, for an order that Nobantu Steel be compelled to deliver its book debts to further perfect the pledge and cession of book debt that it granted to the applicants, as well as costs. The application is opposed on the limited ground that there is an alleged dispute of fact in respect to the amount claimed.

### *Background facts*

- [2] On 18 May 2022, the second respondent, on behalf of and in her capacity as director of the first respondent, signed an acknowledgement of debt ("the AOD") in terms of which the first respondent undertook to repay the Applicants the amounts which the applicants had invested in the first respondent's business. A copy of the AOD is annexed and marked "FA3" to the founding papers.

- [3] The material terms of the AOD are inter alia that, the first respondent undertook to repay the applicants R1 225 250.00 (One Million Two Hundred and Twenty-Five Thousand Two Hundred and Fifty Rands) ("the sum"). The sum was to be paid to the applicants in instalments as follows. The first payment in the amount of R63 000.00 was due on or before 31 May 2022. Thereafter, three equal and consecutive instalments in the amount of R15 000.00 was payable monthly on or before the last day of the month, during the period 1 June 2022 to 31 August 2022. Thereafter, five equal and consecutive instalments in the amount of R20 000.00 was payable monthly on or before the last day of the month, during the period 1 September 2022 to January 2023. A final once-off payment in the amount of R1 000 000.00 in settlement of the balance, payable on or before 28 February 2023. The preamble to the OAD records that "the legal costs in the sum of R17250.00 (VAT inclusive) being incurred by the creditors in enforcing compliance with the agreements, and in the negotiation and preparation of this acknowledgment (the legal costs)."
- [4] The AOD records that, upon receipt from the applicants of a notice in writing of the occurrence of any breach of the obligations in its terms a failure to remedy such breach within 14 days, the first respondent will forthwith pay over to the applicants, the sum (which shall immediately become due and payable), failing which the applicants shall be entitled to exercise its security. In terms of the AOD this comprises the shareholding held by the second respondent in the first respondent, or such proportion thereof that is deemed to be equivalent to the value of the sum, which shares are in terms of the AOD, pledged and ceded by the second respondent to the applicants. In addition, the AOD records that, the book debt of the first respondent, was also pledged and ceded by the first respondent to the applicants.
- [5] The AOD also records that in the event of a default the full balance of the sum then due shall become immediately due and payable and shall attract interest at the agreed rate of 25.09% (twenty-five-point nine percent) per annum until date of final payment. Significantly, a certificate of balance signed by the attorney of the applicants, at any time, shall constitute prima facie proof of the



sum, which is due and payable, as at date of signature thereof. The second respondent, Khumalo bound herself as surety for and co-principal debtor in solidum with Nobantu Steel, in favour of the applicants, for all and any obligations of contained in the AOD and waived the benefits of excussion and division.

- [6] In breach of the AOD, Nobantu Steel partially complied with the AOD in that it effected payment to the applicants in the total amount of R163 500.00 paid in various amounts between May and December 2022. No further payment was forthcoming. An amount of R1 061 750.00 as appears from the certificate of balance ("FA4") was outstanding at the launch of this application. The balance is not only due in terms of the agreed instalments payments but is also immediately due and payable by virtue of the acceleration clause contained in the AOD. On 25 October 2023, the applicants' attorneys of record, transmitted a breach notice to the first and second respondent, affording them 14 (fourteen) days within which to remedy the breach. However, notwithstanding delivery of the breach notice, and the lapsing of the 14-day period afforded to the respondents, the respondents remain in breach of the AOD.
- [7] The respondents' defence, or which they allege, is that up to R17 250.00 more than the alleged amount of R163 500.00 was paid of the amounts owing. In response to this, the applicant explains in its replying affidavit that an amount of R180 250.00 was paid by the respondents as per the founding affidavit of which R17 250.00 was allocated to legal fees and therefore once such deduction has been made, an amount of R163 500.00 has been paid towards the debt set out in the acknowledgment of debt.
- [8] It is trite that a real, genuine and bona fide dispute of fact can only exist where the Court is satisfied that the party who purports to raise the dispute, has seriously and unambiguously addressed the facts said to be disputed in his or her affidavit. The respondents do not meet this threshold. It is trite that, "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.”<sup>1</sup>

[9] It is well established that if the material facts are in dispute and there is no request for the hearing of oral evidence, a final order will only be granted on notice of motion if the facts as stated by the respondent together with the facts alleged by the applicant that are admitted by the respondent, justify such an order.<sup>2</sup> Unless, of course, the court is satisfied that the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is so far-fetched or so clearly untenable or so palpably implausible as to warrant its rejection merely on the papers.<sup>3</sup>

[10] The facts of this matter are such that the court is satisfied that the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, and is clearly untenable. There is quite simply, no valid defence to the applicants' claim on the papers. The respondents place absolutely no facts before the Court which could be considered a dispute, or which could raise a dispute or triable issue. On the contrary, the applicants have shown broadly that the amounts due are owing to them and further that there is no dispute insofar as the amounts paid by the respondents is concerned. Accordingly, the only appropriate relief to be granted is that which is prayed for in the notice of motion, with costs.

### Order

[11] I accordingly grant the following order:

11.1 The first and second respondents, the one paying the other to be absolved are ordered to pay the applicants the sum of R1 061 750.00 (One Million Two Hundred and sixty-one Thousand seven hundred

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<sup>1</sup> *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at para 26. See also *Cooper and Another NNO v Curro Heights Properties (Pty) Ltd* 2023 (5) SA 402 (SCA) at para 13.

<sup>2</sup> The general rule as stated in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235E has been followed and applied on numerous occasions; see, for example, *Lubbe v Die Administrateur, Oranje-Vrystaat* 1968 (1) SA 111 (O) at 113; *Cape Tex Engineering Works (Pty) Ltd v SAB Lines (Pty) Ltd* 1968 (2) SA 528 (C) at 529; *Bumkloof Caterers (Pty) Ltd v Horseshoe Caterers (Green Point) (Pty) Ltd* 1976 (2) SA 930 (A) at 938.

<sup>3</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635C; *National Director of Public Prosecutions v Zuma* above n 1 at para 26.

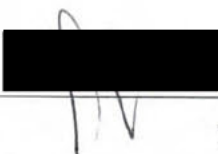


Hundred and Fifty Rand) together with interest at the agreed rate of 25.9% per annum from date of failure to pay to date of final payment; and within seven (7) days hereof; and

11.2 Failing which the second respondent is compelled to transfer the shareholding held by her in the first respondent to the applicants, to perfect the pledge and cession of shares granted by the second respondent to the applicants.

11.3 The first respondent is compelled to deliver the book debt of the first respondent to the applicants to perfect the pledge and cession of book debt granted by the first respondent to the applicants; and

11.4 The first and second respondents are directed to jointly and severally pay the costs of the application.

  
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**TP MUDAU**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

Date of Hearing: 13 August 2024

Date of Judgment: 21 August 2024

### **APPEARANCES**

Counsel for the Appellant: Adv. BD Stevens

Instructed by: Morgan Law Inc.

Counsel Respondent: Adv. MD Matsela

Instructed by: Okafor Ma Attorneys Inc.