

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

Case Number: 037327/23

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
13/2/2025	[REDACTED]
DATE	SIGNATURE

In the matter between

ELIZABETH DIEDERICHS

APPLICANT

and

SHONISANI ONISMUS RAVELE

RESPONDENT

In re:

ELIZABETH DIEDERICHS

PLAINTIFF

and

SHONISANI ONISMUS RAVELE

DEFENDANT

JUDGMENT

MAHOMED J

INTRODUCTION

- [1] This is an application for summary judgment, the Applicant is an advocate and sues for fees outstanding for the period February 2014 to October 2019, services rendered. Advocate Nel appeared for the Applicant and submitted that even though no date for payment was agreed upon, a reasonable time had elapsed and the fees are now due and payable.
- [2] When the legal representatives introduced themselves to me in chambers I inquired as to a possible settlement in that the Respondent's version on the papers, set out a cumbersome and somewhat loose arrangement regarding payment of fees, unusual and not in compliance with statutory requirements of the Contingency Fees Act, which he placed reliance on. Mr. Nel advised me that his client had exhausted all avenues and that the court will have to hear the application.
- [3] At the commencement of this matter in court, Mr. Nel advised me that the parties had discussed the matter on their way to my court and had resolved the dispute however, he submitted that the issue of costs remained for adjudication.

THE SETTLEMENT

- [4] Mr. Nel advised that the Applicant instructed him to settle the matter, in terms of which the Respondent is to pay the applicant her claim an amount being the balance owed in the sum of R614 933, on or before 29 January 2026. The Respondent, represented himself and confirmed this settlement agreement and agreed that it was to be made an order of court.

COSTS

- [5] Mr Nel submitted that the Respondent must be ordered to pay the costs of the application on an attorney-client scale. He ought not to have delayed payment and to have dragged the Applicant through the whole process of an application

for summary judgment. The procedure in R32 is involved and costly, in casu there were material discrepancies between the plea and the Respondent's opposing affidavit in summary judgment. Counsel was adamant that summary judgment would have been granted and therefor the rule on the costs follow the successful party is the appropriate order.

- [6] He submitted that those costs must be awarded on a punitive scale, in that the Respondent is an attorney, he settled a matter at the doors of the court, no facts were new to him on the day and he ought to have known the consequences of a weak or no defence at summary judgment.
- [7] Mr. Ravele represented himself, and he contended that the parties had concluded a compromise and that the Applicant was not a successful party, and the usual rule that costs follow the cause should not apply. He argued that the court should order each party to pay their own costs. The Respondent maintained his view that the defences he raised were good in law, however, he was willing to compromise and settle the amount outstanding in fees as agreed between the parties. He contended that in terms of an agreement between the parties, the Applicant was only entitled to payment upon her fees being taxed. Her fees were not yet taxed and not paid to him at the date of the hearing of this matter, in his view the application was premature, he was certain that he would have successfully opposed the application.
- [8] Mr. Nel had taken the court through the various inconsistencies and discrepancies between the plea and the Respondent's affidavit, which I do not intend to set out, they are on the record. It was not disputed that a reasonable time had elapsed for payment of legal fees, it was clear to me that the Applicant had waited a long while for payment of her fees, the Respondent conceded liability for the balance owed, in earlier correspondence between the parties, he could have avoided costs of the day.
- [9] I gained the impression that the Respondent, upon my inquiry realised the worth and strength of his defence and decided to settle the matter. The Applicant in my view was entitled after the long delay of almost 5 years to sue for her fees

and had met the requirements for relief in terms of R32 of the Uniform Rules of Court, no points in limine were before me to dispute that the liquid claim.

[10] There was no evidence before me that anything new had transpired on the day to have led to the settlement on the day. Having heard Mr. Nel's submissions on the probabilities, a judgment would have been granted. I am of the view that the Respondent is liable for costs of the application.

[11] I am not persuaded that the Respondent compromised, what was conveyed to me was a settlement agreement, which I am to make an order of court.

The writers Pete¹, Hulme et al¹, state, as follows:

"the essence of a compromise is that the defendant is asking the plaintiff to accept less than he is asking for in order to settle the whole claim without the need for litigation. "why don't you accept the following partial payment in full and final settlement of your whole claim and we can call it quits."

[12] There is no evidence before me of a settlement for less than the amount outstanding to the Applicant. Mr. Nel confirmed that the amount agreed differs from the claim amount only due to credits passed for payments received from the Respondent since the issue of summons.

[13] I am also of the view that the Respondent was opportunistic in arguing a compromise, when in fact he had made an unconditional offer to settle the balance outstanding, an amount which he had confirmed in earlier correspondence. I am of the view that punitive costs are appropriate, the Respondent could have settled this matter earlier and was on the day opportunistic in alleging a compromise, there were no facts to support this claim and again to the prejudice of the Applicant.

Accordingly, I make the following order:

¹ Civil Procedure a Practical Guide, 2nd ed, p366 at 2.2

[14] By agreement between the parties the Respondent shall pay the Applicant the amount of R614 933.00 on or before 29 January 2026.

[15] The Respondent shall pay the costs of this application on an attorney-client scale.




MAHOMED J
JUDGE OF THE HIGH COURT
PRETORIA

Date of hearing: 29 January 2025

Date of Judgment: 13 February 2025

For the Applicant: Adv. S Nel instructed by Du Bruyn & Morkel Attorneys

For the Respondent: Mr. S Ravele