



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION (MIDDELBURG LOCAL SEAT)**

CASE NO: 2863/2023

(1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED	
10/07/2024 _____ DATE	_____ SIGNATURE

In the matter between:

MJG LOGISTICS (PTY) LTD

PLAINTIFF

And

FOLOYI CONSTRUCTION AND PROJECTS CC

RESPONDENT

JUDGMENT

Langa J

Introduction and facts

[1] This is an opposed summary judgment application in terms of which MJG Logistics (Pty) Ltd, (*the Plaintiff*), seek judgment against Folyoi Construction and Projects CC, (*the Defendant*), in the amount of R751 876.80, together with interest calculated *a tempore morae* from date of service of summons to date of final payment, as well as the costs. The Defendant filed its plea on 8 August 2023. On 23 August 2023 the Applicant launched this application which was also duly served on the

Respondent. The Defendant in response served and filed its answering affidavit on 13 day of October 2023. In this judgment the parties will be referred to as cited in the action.

[2] The Plaintiff contended that the Defendant's plea raises no triable issues as it does not disclose a *bona fide* defence and constitutes in essence a bare denial to the claim. Further, the Plaintiff argued that although in the plea the Defendant failed to plead any material facts in support of any defence, in the opposing affidavit the Defendant raised and outlined a number of specific grounds opposing the application which were not disclosed in the plea. Advocate De Leeuw for the Plaintiff submitted that it is impermissible in terms of the amended Rule 32 of the Uniform Rules of Court for the Defendant to refer in its affidavit to the plea which was delivered without disclosing fully the nature and grounds of defence as well as the material facts. He argued that on the basis of this non-compliance with the rules, the application for summary judgment should be granted. I deal with aspect in the following paragraphs.

[3] As stated above, in the opposing papers the Defendant raised a point *in limine* as well as other defences which are the following:

- 3.1. Lack of jurisdiction;
- 3.2. Lack of ability to depose to the affidavit in support of the summary judgment;
- 3.3. Claim not based on a liquid document;
- 3.4. No valid contract concluded;
- 3.5. Incorrect amounts claimed.

[4] Before I deal with the merits of the Defendants defences, I will first deal with the Plaintiff's contention that the Defendant's plea does not disclose a *bone fide* defence and that it is also not in harmony with the affidavit resisting the summary judgment.

Failure to disclose any material facts in support of the purported defence(s)

[5] While up to 2019 a plaintiff could apply for summary judgment 15 days after a defendant has filed a notice of intention to defend, in terms of the amended Rule 32 a plaintiff can only apply for summary judgment within 15 days after a plea has been filed. In terms of rules 18(4) and 22(2) the plea must clearly and concisely state all the material facts relied upon for the defence. Rule 22(2) of the Uniform Rules of Court provides as follows:

"The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies."

[6] The rule therefore makes it clear that in a plea a defendant is under a duty to set out all material facts upon which it relies in support of its defence. For that reason, in order to successfully resist summary judgment, the Defendant must disclose fully the nature and grounds of his defence as well as the material facts relied upon. As was stated in *First National Bank of SA v Myburgh and Another* 2002 (4) SA 176 (CDP) at 184H, the Court's discretion should be exercised on the basis of the material before it and not on conjecture or speculation. Further, the plea must deal with the merits of the application. See *WM Mentz & Seuns (Edms) Bpk v Katzake* 1969 (3) SA 306 (T).

Bald and vague allegations will not comply with the requirements of the rules. See *Barclays Western Bank Ltd v Bill Jonker Factory Services (Pty) Ltd* 1980 (1) SA (SE).

[7] It is evident from the Defendant's heads of argument that it is relying on the grounds raised in the opposing affidavit to challenge the application for summary judgment. Nowhere in the heads of argument does the Defendant deal with the issue of the plea. All the Defendant does is to criticize the Plaintiff's particulars of claim without dealing with the alleged defect in the plea.

[8] Upon perusal the plea, it is clear, as contended by the Plaintiff, that in the main it constitutes a bare denial of the Plaintiff's claims. No material facts are put forward in the plea to support the denial of the claim. It is only in the affidavit opposing the summary judgment that the Defendant attempts to remedy this by, for the first time, raising the new material facts in support of new defences which are not contained in the plea.

[9] Although the Defendant denies this, it is however, clear that the requirements of the subrule have not been met. It is insufficient for the Defendant to merely refer to the plea in its affidavit, whereas such plea does not disclose the nature and grounds of defence, and most importantly, the material facts relied upon for such defence. It is trite that the nature and grounds of defence and the material facts in the affidavit opposing summary judgment must reflect what is in the plea. In this case it is clear that the Defendant is in essence attempting to build a case in the affidavit resisting the summary judgment. This is in conflict with the rules and established law.

[10] In my view, although the Defendant denied the Plaintiffs claim, the Defendant should have gone further to allege clearly and concisely all the material facts upon which it relies for the denial. Accordingly, for the Defendant to have properly raised the new issues as it did in the affidavit, it would have had to have the plea amended in terms of Rule 28(1). This has not been done. In the light of the fact that no reference was made at all in the plea of the new defences now raised in the affidavit resisting summary judgment, the defences appear to be an afterthought.

[11] In the light of the fact that the Defendant's plea is one of bare denial, which does not raise any triable issue, the plea is non-compliant with the rules and in particular Rule 22 referred to above. I am accordingly in agreement with the submissions by the Plaintiff's counsel that in such circumstances, the Defendant should not be allowed to make out a case in the affidavit resisting summary judgment while such affidavit is not contemporaneous with the plea. I consequently find that the Defendant is not entitled to rely on these defences and the material facts which are raised in the affidavit which are not part of the plea.

[12] Support for this approach is found in the unreported judgment of *Bragan Chemicals (Pty) Ltd v Devland Cash and Carry (Pty) Ltd and Another* [2020] ZAGPPHC 397 the facts of which are strikingly similar to the present case. The court held that in such circumstances where no defence was raised in the plea, it would be irregular to raise a new defence in an affidavit resisting summary judgment. The court further held that in such a case 'the defendants are bound by this bare denial and the fact that they have failed to provide this court with a version in relation to a possible defence'. (My emphasis).

Conclusion

[13] In conclusion, I accordingly find that the Defendant cannot be allowed to rely on the new defences raised in the affidavit. Based on this finding the matter should end here as in essence it means that the Defendant's plea does not disclose a *bona fide* defence, or a triable issue. On this basis alone, the application for summary judgment ought to be granted.

[14] In the light of this finding, I find it not necessary to deal with the individual defences raised by the Defendant as indicated in paragraph 3 above. These defences were all raised in the opposing affidavit and should therefore not be allowed. Concerning costs, the general rule is that the costs follow the results. I am of the view that there is no just reason for deviation from this rule and the Plaintiff is accordingly entitled to be awarded the costs of suit.

Order

[15] In the result I make the following order:

The application for summary Judgment is granted in favour of the Plaintiff with costs.

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MBG LANGA
JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: Advocate R De Leeuw

For the Defendant: Advocate S Mahlasela

Date heard: 25 March 2024

Date delivered: 10 July 2024

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 10 July 2024 at 14h00.



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION MIDDELBURG (LOCAL SEAT)

CASE NO: 2863/2023

BEFORE THE HONOURABLE JUDGE: LANGA J
DATE: 10 JULY 2024

In the matter between:

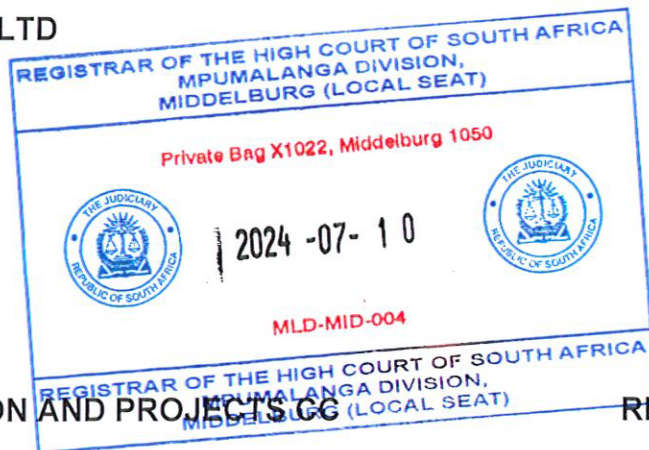
MJG LOGISTICS (PTY) LTD

PLAINTIFF

And

FOLOYI CONSTRUCTION AND PROJECTS CC

RESPONDENT



COURT ORDER

The Judge heard the matter on 25 March 2024 and electronically circulated the judgment on 10 July 2024 and gave an order in paragraph "15" as follows:

[15] " In the result I make the following order:

The application for summary Judgment is granted in favour of the Plaintiff with costs."



BY ORDER OF THE COURT



REGISTRAR

T. MBUYANE