# IN THE HIGH COURT OF SOUTH AFRICA
# FREE STATE DIVISION, BLOEMFONTEIN

**Case no: 2205/2023**
Reportable: NO
Of Interest to other Judges: NO
Circulate to Magistrates: NO

In the matter between:

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| **J[…] H[…] V[…]** | **Applicant** |
| **And** | |
| **CENTLEC (SOC) LTD** | **First Respondent** |
| **MANGAUNG METRO MUNICIPALITY** | **Second Respondent** |
| **LOURENS HERMANUS PIENAAR N.O.** | **Third Respondent** |
| (In his capacity as trustee of the PIENAAR TRUST | |
| Registration Number: IT1[…]) | |
| **H[…] T[…] V[…]** | **Fourth Respondent** |

**CORAM:** MTHIMUNYE, AJ

**HEARD ON:** 26 OCTOBER 2023

**DELIVERED ON:** 23 JANUARY 2024

[1] The applicant herein (Mr V[…]) seeks an order declaring that he is not indebted to the first respondent (Centlec) for payment of an amount of R3 748 442.21 or any amount in terms of Centlec account number 5[…] on the basis that the debt was extinguished by prescription as intended in section 10(1) of the Prescription Act, 68 of 1969. The applicant further seeks costs against the first respondent.

[2] The first respondent opposes this application and brought a counter-claim in the amount of R2 616 960.35, plus interest at the prescribed rate of 11,25% per annum, being the clearance figures declared and issued by the first respondent on 10 December 2020 following the applicant's request to the first respondent; alternatively to declare the applicant contractually bound or liable to pay the outstanding account, currently or previously held by him with the first respondent under account number 5[…] as per the clearance figure issued to him by the first respondent on 10 December 2020.

[3] The first respondent is a private company with limited liability wholly owned by the second respondent. The second respondent is joined herein as the sole shareholder of the first respondent and only in as far as it has a real and substantial interest in the relief sought against the first respondent. Unless it opposes this application, no relief is sought against the second respondent.

[4] The third respondent is a major male and the owner of Portion 4 of Farm D[…] 3[…], Bloemfontein ("the farm"). He is joined herein in his capacity as a trustee

of the Pienaar Trust and only in as far as he has a real and substantial interest in the relief sought against the first respondent and unless he also opposes, no relief is sought against him. The fourth respondent is a major female businessperson to whom the applicant was once married until their divorce in 2009. She is also joined herein in as far as she has a real and substantial interest in the relief sought against the first respondent. Again, unless she opposes, no relief is sought against her.

[5] On or about 20 October 2015, the fourth respondent entered into a written lease agreement with the third respondent in terms of which the fourth respondent leased certain arable fields on Portion 4 of the farm for the period 1 November 2015 to 31 December 2020. Although at that time the applicant was no longer married to the fourth respondent, he was, at all relevant times acting as her farm manager and also for RZT Zelpy 4243 (Pty) Ltd ("RZT"), a company owned by the applicant's family. RZT took over the lease of the farm from Steenkamp Boerdery in 2012. The lease expired in 2015, just before the fourth respondent entered into another one with the third respondent. The applicant started farming on the farm during 2012 whilst it was still leased by Steenkamp Boerdery.

[6] From 2012 (month not mentioned in the papers) to 1 September 2016, the first respondent supplied electricity to the applicant under account number 500[…] for use on the farm. The applicant's last payment to the first respondent was on 20 October 2014. Despite receiving statements and reminders from the first

respondent, the applicant made no further payments. In August 2016 the applicant received an account requesting payment of an amount of R1 783 128.35 for electricity allegedly used on the farm. Aggrieved by the amount, the applicant instructed his attorneys who then wrote a letter to the first respondent denying liability and disputing the amount and demanding a recalculation of the applicant's consumption and liability, and further, to immediately restore electricity supply to the applicant. On 26 August 2016, the first respondent through its employee Ayanda Pini, sent an email with calculations to the applicant and his attorneys, to which there was no response.

[7] On 21 September 2017 the applicant's attorneys again wrote a letter to the first respondent disputing the applicant's indebtedness to the first respondent and stating that no electricity was supplied to the applicant since 01 September 2016, a day on which it was disconnected. Subsequent correspondence was exchanged between the applicant's attorneys and the first respondent and / or Medaco collections, particularly regarding the institution or not of legal proceedings. I must mention herein that the first respondent confirms in its answering affidavit that it is yet to issue summons against the applicant for payment of the outstanding account with account number 500[…] and for this reason, the first respondent argued that these proceedings were pre-emptive and superfluous at this stage, and as such the applicant must bear the costs hereof.

[8] In essence, the applicant denies liability for payment of R3 748 442.21 and pleaded that this is a debt as intended in section 10(1) of the Prescription Act, 68 of 1969 and therefore since the debt became due on 1 September 2016 when the electricity supply was disconnected, the debt has prescribed. He avers that prescription was not interrupted as he has neither made any payment after 1 September 2016 nor acknowledged any liability.

[9] On or about 30 July 2020, the third and the fourth respondent entered into a written addendum to the lease agreement extending the lease by a period of two months for a rent amount of R200 000.00 payable on or before 12:00 on 31 December 2020. On the same day, the applicant and the third respondent entered into a written addendum deed of suretyship. The lease addendum was subject to the extension of the deed of suretyship signed by the applicant in favour of the third respondent to 31 December 2020, which was done.

[10] On or about 27 August 2020, the applicant, third and fourth respondent entered into a written memorandum of understanding for the third respondent to avail the farm, subject to the lease agreement and addendums thereto, to jointly with the applicant, farm, plant and harvest wheat and further procure farming necessities. In the same agreement, the applicant and the fourth respondent agreed that they will pay, amongst others, the outstanding account of the first respondent (Centlec) with account number 500[…] as per the clearance certificate issued by Centlec on 10 December 2020. The relevant clause reads:

*"6.7 WLK Dienste and JH V[…] hereby irrevocably confirm and agree that they shall, before close of business on 31 December 2020, fix, alternatively resolve issues in respect of, in the further alternative pay the following damages and/or accounts in respect of the property:*

*6.7.1. Outstanding account of Centlec, with account number 500[…], as per the clearance certificated (sic) to be issued by Centlec on 10 December 2020 …"*

[11] It is this agreement between the applicant, third and fourth respondent and more particularly this clause pertaining to the payment of the Centlec account 500[…] that the first respondent is relying on and argues that in this clause, the applicant irrevocably confirmed his liability and agreed and undertook that he, together with the fourth respondent, shall pay the outstanding account of Centlec with account number 500[…] as per clearance certificate that was issued by Centlec on 10 December 2020 for payment of the amount of R2 616 960.35. This debt, the first respondent argues, arose on 31 December 2020 and therefore has not prescribed.

[12] The first respondent argues that Clause 6.7.1 in the agreement between the applicant, the third and the fourth respondent amounted to an acknowledgement of the debt by the applicant to Centlec in respect of the figures as determined on the clearance certificate issued by Centlec on 10 December 2020.

[13] The applicant contends that the first respondent was not a party to the memorandum of understanding entered into by the applicant, third and fourth respondent on 27 August 2020 and further that, at the time he entered into the agreement with the third and fourth respondent on 27 August 2020, his dispute regarding re-calculations remained. Although the applicant claims that his dispute with the first respondent was still active at the time of the agreement of 27 August 2020, yet he does not take this court into confidence on why he never responded to the email sent by the first respondent's employee on 26 August 2016.

[14] The applicant further argued that the debt arose on 1 September 2016 when the electricity was disconnected. The first respondent contends, however, that even if this court may agree with the applicant, that the debt arising from whenever the applicant stopped making payments or the electricity was disconnected, has prescribed, the one arising out of the agreement of 27 August 2020 between the applicant; third and fourth respondent has not prescribed as it only arose on 20 December 2020 which is the last date for compliance by the applicant and the fourth respondent with their obligation created by clause 6.7.It is evident that at the date of the hearing of this matter the debt that arose on 20 December 2020 had not prescribed.

[15] In my view, the question that this court must answer is whether or not clause 6.7.1 of the agreement entered into on 27 August 2020 between the applicant; the third and fourth respondent amounts to an acknowledgement of debt or

liability to the first respondent by the applicant. It is trite that in terms of section 14(1) of the Prescription Act, an acknowledgement of debt / liability does interrupt prescription. If the answer to the first question is in the positive, it follows therefore that the order that the applicant is not indebted to the first respondent for a specific amount or any amount at all cannot be granted. Section 14(1) of the Prescription Act 68 of 1969 states as follows:

"*1. The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor."*

[16] The applicant contends that clause 6.7 did not amount to an acknowledgement of debt since it was not made to the first respondent i.e. the respondent was not a party to the agreement. Section 14 of the Prescription Act does not state to whom the acknowledgement must be made for it to interrupt prescription, it only states that it must be made by the debtor. The applicant, in its averment that the acknowledgement must be made to the creditor, provided no binding authority for same. This court found no such authority to the fact that indeed it must be made to the creditor, and in my view, that is not the determining factor for the validity and effect of the acknowledgement.

[17] In **Lieberman v Santam Ltd (168/98) [2000] ZASCA 173; Lieberman v Santam Ltd 2000 (4) SA 321 (SCA),** the Supreme Court of Appeal held that:

"*…On a proper construction of the agreement it is clear, in my view, that it created a new contractual foundation for a valid and enforceable obligation to pay which*

*existed independently of any previous obligation under the Act… In view of the express acceptance of liability for such damages and the undertaking to pay, it was thereafter no longer open to the respondent to deny liability".*

From this dictum, it is clear that a provision like the contested clause 6.7 in an agreement does amount to an acknowledgement of liability. It is therefore my considered view that as much as the first respondent was not a party to the agreement entered into by the applicant; third and fourth respondents on 27 August 2020, the evidential value of clause 6.7 is that it clearly acknowledges the indebtedness of the applicant to the first respondent for an amount of R2 616 960.35 as reflected on the clearance certificate issued by the first respondent in respect of account number 500[…].

[18] I now turn to deal with the issue of costs. Costs are governed by two principles, firstly; that unless expressly otherwise enacted, the granting thereof rests within the discretion of the court, which discretion must be exercised judiciously; and secondly, that generally, costs follow the result i.e. they are awarded in favour of the successful litigant.

Consequently, I make the following **Order**:

1. The application is dismissed with costs.
2. The first respondent's counter-claim for clearance figures in the amount of R2 616 960.35, plus interest at the prescribed rate of 11,25% per annum is upheld.
3. The applicant is ordered to pay the costs of the counter-claim.

**D.P. MTHIMUNYE, AJ**

**Appearances:**

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| For the Applicant | Adv D De Kock |
| | Bloemfontein Society of Advocates |
| Instructed by | Spangenberg Zietsman & Bloem |
| | Bloemfontein |
| | |
| For the First Respondent: | Adv A I B Lechwano |
| | Bloemfontein Society of Advocates |
| Instructed by | Rampai Attorneys |
| | Bloemfontein |