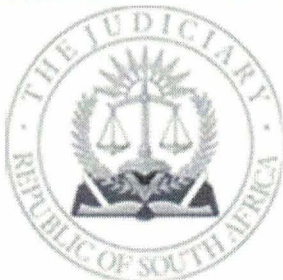
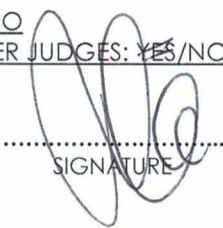


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 17118/2020

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	REVISED.
<u>1/6/2021</u> DATE	
 SIGNATURE	

In the matter between:

DUNLOP INDUSTRIAL AFRICA (PTY) LTD

Plaintiff

and

NAEEMA BHAILAL

Defendant

JUDGMENT

MAKUME J:

- [1] This is an application for summary judgment in which the Plaintiff claims payment of the sum of R547 127.13 plus interest from the Defendant. It is alleged that during the period May 2015 to December 2019 whilst the Defendant was in the employment of the Plaintiff as

and internal sales manager she unlawfully misappropriated that amount to herself.

[2] The amounts that the Defendant unlawfully appropriated to herself is set out in Annexure "A" to the particulars of claim.

[3] In her special plea and plea on the merits dated the 15th October 2020 the Defendant pleads that:

- i) The Plaintiff's Claim prescribed because the cause of action arose during 2015 and summons was only issued on the 7th August 2020 after a period of three years and accordingly in terms of Section 11 of Prescription Act number 68 of 1969 any claim that arose prior to the 7th August 2017 had become prescribed.
- ii) Secondly that the amount claimed is not liquidated and thus incapable of being adjudicated in a summary judgment application.
- iii) That in the event the court finds that the amount claimed is liquidated that the Defendant conditionally admits that she may have in error over claimed commission in the amount of R177 905,68.

[4] In issue in this application is the following:

- a) Is the amount claimed liquidated or not
- b) Has such amounts or part thereof become prescribed

[5] The basis for claiming that the amount being sued for is not liquidated according to the Defendant is because it is alleged to have been stolen money and nothing more. This is incorrect. In the matter of **Kleynhans vs Van der Westhuizen N.O. 1970(2) page 742 AD** a trial court had found that the claim which was based on the commission of theft was a liquidated claim for purposes of Section 9(!) of Act 24 of 1936 (The Insolvency Act).

[6] The decision in Kleynhans (supra) was cited with approved by **Trengove J in Irvin & Johnson Ltd v Basson 1977 (3) (T) 1067.**

[7] I am satisfied that the amount claimed in the particulars of claim is liquidated and suffices for the Plaintiff to apply for summary judgment.

[8] The second leg of this application is, having decided that the amount is liquidated and taking into consideration the admitted amount of R177 905.68 whether that amount has become prescribed or not.

[9] The Defendant has admitted the amount mentioned above on condition that this court does not find in her favour on the issue of prescription.

- [10] Annexure A to the particulars of claim has dates that commenced on the 28th March 2018 which means that whatever is admitted can never be said to fall within the prescription date. That amount having been admitted the condition falls off and the Plaintiff is entitled to payment of that amount of R177 905.68.
- [11] As regards the balance the Defendant besides raising the issue of non-joinder she also mentions that in the disciplinary enquiry the Plaintiff only alleged an amount of R300 000.00 to have been misappropriated or stolen.
- [12] The Defendant has in my view raised a triable issue regarding the balance of R370 031.45.
- [13] In the result I make the following order:

ORDER:

1. Summary Judgment is granted in the sum of R177 095.68.
2. The balance of R370 031.45 is referred to trial
3. The costs of this application shall be costs in the trial.

DATED at JOHANNESBURG this the day of JUNE 2021.



M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING : MAY 2021
DATE OF JUDGMENT : 1st JUNE 2021
FOR PLAINTIFF : Adv HC BOTHMA
FOR DEFENDANT : ATT VALLY