



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. <i>Yes</i>
<i>27/01/2016</i>	
DATE	<i>[Signature]</i>
	SIGNATURE

27/01/2016
Case no. 73677/2015

In the matter between:

S. SAPE

Applicant

and

AP LEDWABA ATTORNEYS

Respondent

Case no. 73679/2015

In the matter between:

F. MATIKA

Applicant

and

AP LEDWABA ATTORNEYS

Respondent

JUDGMENT

RABIE, J

1. In both the above-mentioned matters the respective applicants, being practising advocates, claimed professional fees from the respondent which are allegedly outstanding in respect of professional work rendered. The facts pleaded on behalf of the applicants as well as the defence offered by the respondent are similar and hence it is appropriate to address both matters in one judgement.
2. The applicants attached a number of invoices to their simple summonses which merely alleged that the amount claimed is in respect of services rendered during a specific period which is due and payable but which has remained unpaid. According to the applicant in case number 73677/2015 an amount of R 499 100,36 is due and owing to him. According to the applicant in case with number 73679/2015 an amount of R 482 250, 00 is due and owing to him. The respondent gave notice of its intention to defend the actions and this resulted in the present two applications for summary judgement before this court.
3. Both matters served before the court on 19 November 2015. In respect of each matter the court ordered the respondent to pay the applicant an amount of R 100 000,00. The court postponed the application for summary judgement in respect of the balance of the respective amounts claimed and ordered the respondent to file its answering affidavit together with an application for condonation for its late filing, on or before 12 December 2015. An order for costs was also made against the respondent. The respondent duly filed an answering affidavit in both matters which incorporated an application for condonation. The applicants persisted with their applications for summary judgement and also opposed the applications for

condonation. The applicants filed an answering affidavit in respect of the applications for condonation.

4. It is appropriate to deal with the defence on the merits first. I shall henceforth refer to the applicants in the singular unless required otherwise. The client of the respondent in respect of which the fees were claimed was the Road Accident Fund (RAF). All the invoices attached to the simple summons allegedly supporting the amount claimed, relate to different matters in which the applicant appeared for the RAF on the instruction of the respondent.
5. The respondent admitted being indebted to the applicant in respect of services rendered on behalf of the RAF but denied that the amount claimed was the correct amount. In respect of certain invoices attached to the summons the respondent attached correspondence and proof of payment to its answering affidavit.
6. The respondent further stated that "the invoices were taxed off in terms of the RAF tariff" and concluded that the respondent is thus not liable for same. Although not specifically stated, it appears from the respondent's answering affidavit as well as the applicant's answering affidavit in the condonation application that the agreement between the parties was that fees would be marked according to a "Framework on Counsel Fees" issued by the RAF from time to time. According to the respondent in its answering affidavit the applicant, in drawing his invoices, used a "new tariff" which only took effect on 25 February 2015 instead of using the old tariff relating to work done and court appearances applicable at the relevant time.

7. The respondent calculated the remaining invoices in accordance with the old tariff and concluded that it was indebted to the applicant in case number 73677/2015 in an amount of R 155 732, 40 and to the applicant in case number 73679/2015 in the amount of R 117 500, 00. The respondent therefore admitted that, having regard to the court order dated 19 November 2015, the amounts of R 55 732, 40 and R 17 500, 00 were due to the respective applicants. Regarding the balance of the claims the respondent submitted that it had a bona fide defence for the reasons mentioned above.
8. In respect of the application for condonation the respondent did not, as was stated above, file a separate notice of motion supported by an affidavit. However, in the answering affidavit under the heading "Ad Condonation" the respondent prayed for the required condonation for the late filing of its opposing affidavit and referred to the reasons for the application which were briefly the following: The respondent relocated to new premises during June 2015 and consequently all the necessary files of the applicant "could not be obtained quickly to assess them in respect of payment". This resulted in the late filing of the opposing affidavit. It was further submitted that the failure to file the opposing affidavit in time was not due to any deliberate non-compliance of the Rules of this Court and that the applicant suffered no prejudice as a result thereof. On the other hand, if the opposing affidavit is refused due to its lateness, the respondent would be prevented from presenting its case to court. The respondent also submitted that it has a bona fide defence to the action.
9. In opposing the application for condonation it was submitted that the reasons offered were bold, vague and sketchy. It was submitted that the respondent was

never required to obtain the files "quickly" but had 5 months to do so since its relocation and more than a month to do so since the application for summary judgement was served on it on 13 October 2015. Furthermore that the respondent did not explain why the files were inaccessible and what actions they took to obtain the files. Based on these submissions the applicant submitted that the respondent's default was the result of a reckless or intentional disregard of the Rules of Court

10. The applicant also submitted that the respondent has failed to show good cause for condonation for the reason that it failed to show that it had a prospect of success in defending the principal case. In support of this submission the applicant went further and, inter alia, submitted that the contention that the fees should have been based on the "old tariffs", was false. The applicant then referred to a rather large number of amounts which he allegedly would have been paid instead of what he had been paid, if the old tariff was applicable. According to the argument this allowed for the conclusion that the old tariff was not applicable. He further submitted that the new tariff was in fact already effective on 15 August 2012 and in this regard he referred to the RAF's Service Level Agreement which he stated had been concluded with all the law firms on the RAF's panel.
11. Regarding the condonation application I am satisfied that the respondent has adequately explained why it failed to file the answering affidavit timeously. It is so that the respondent could and probably should have furnished more detail but I am satisfied that, having regard to the number of matters in respect of which the applicant claimed payment and the time spent to locate the relevant files and to

make the necessary calculations, the conclusion cannot be drawn that the respondent was in wilful default. In my view the respondent has adequately explained why it required more time to file an answering affidavit and the relevant documentation attached to it. Furthermore, the applicant suffered no prejudice as a result of the late filing other than in respect of costs in respect of which he had already obtained a favourable order.

12. Regarding the attack on the defence I cannot, on the papers before me, come to any definitive conclusion and can definitely not draw the conclusions which the applicant wishes this court to draw. It appears, on the face of it, that the respondent may have serious questions to answer, but without having heard the respondent fully on the present dispute, I cannot reject his defence as not being bona fide.
13. Having regard to the order already made against the respondent for payment of the amount of R100 000,00 only the lesser amount submitted by the respondent and mentioned above, can be awarded at this point.
14. In the result the following order is made:
15. In respect of case 72677/2015
 1. The application for condonation is granted.
 2. The respondent is ordered to pay the applicant the amount of R 55 732,40 together with interest thereon at the rate of 9% per annum from date of summons being 17 September 2015, to date of payment.

3. Leave is granted to the respondent to defend the action for the balance of the applicant's claim.
 4. The costs of the application for condonation shall be costs in the cause of the main action.
 5. The costs of the application for summary judgement are reserved.
16. In respect of case 72679/2015
1. The application for condonation is granted.
 2. The respondent is ordered to pay the applicant the amount of R 117 500,00 together with interest thereon at the rate of 9% per annum from date of summons being 17 September 2015, to date of payment.
 3. Leave is granted to the respondent to defend the action for the balance of the applicant's claim.
 4. The costs of the application for condonation shall be costs in the cause of the main action.
 5. The costs of the application for summary judgement are reserved.

A handwritten signature in black ink, appearing to read 'C.P. Rabie', written over a horizontal line.

C.P. RABIE

JUDGE OF THE HIGH COURT