



**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

**Not Reportable**

**Case No: 346/2019P**

In the matter between:

**ENDECON UBUNTU/**

**THUTSE CIVILS JOINT VENTURE**

**PLAINTIFF**

and

**MHLATUZE WATER**

**DEFENDANT**

---

**ORDER**

---

The defendant is to pay the plaintiff:

- (a) The amount of R1 526 745.00.
- (b) Interest on the aforesaid amount *tempore morae* from 22 September 2015 to date of payment.
- (c) Costs of suit, such costs to include the cost of senior counsel.

---

**JUDGMENT**

---

**Mathenjwa AJ****Introduction**

[1] This matter, firstly, came before the Honourable Judge Bezuidenhout who considered and dismissed all the special pleas raised by the defendant against the plaintiff's claim. Subsequently the defendant conceded liability and the issue came before me only for the determination of the amount for the work done by the plaintiff in terms of the written agreement between the parties.

[2] The plaintiff performed professional services relating to a Dukuduku Resettlement Water Project and thereafter delivered a tax invoice for the amount of R1 526 745.00 for the work done for the defendant on 9 September 2015. Despite several demands the defendant failed to pay the plaintiff and eventually the plaintiff issued summons, which was served on the defendant on 26 January 2019.

[3] Before this court the plaintiff was represented by Mr Troskie SC and the defendant by Mr Kuboni, who also, respectively, represented the parties before Bezuidenhout J on the issue of special pleas.

[4] The plaintiff called only one witness, Mr Strydom, the director of the plaintiff who testified that: The defendant appointed the plaintiff for professional services bid for Dukuduku Resettlement Project – Water Supply Scheme for an amount of R4 573 110.00, per letter dated 2 December 2013. The plaintiff performed the work and thereafter provided the defendant with an invoice dated 12 March 2015 for the work done, for the amount of R2 022 309.84. The defendant scrutinised the invoice, communicated with the plaintiff and indicated that the item for

environmental impact assessment on the invoice should be removed because no work was done in respect of this item.

[5] The plaintiff conceded, agreed to remove the fees charged for this item. The plaintiff resubmitted an amended invoice, dated 9 September 2015, for the total amount of R1 526 745.00. This invoice records that the plaintiff has performed professional engineering service for: Professional engineering, the calculation thereof was attached as appendix 'A', on the invoice, survey and construction monitoring fees.

[6] On 7 October 2016 the employee of the defendant, who is the project manager, addressed an email to the plaintiff and stated that the department has finally agreed to pay for this invoice and budget for this is available.

[7] Mr Strydom was cross examined by the defendant's counsel. The cross examination was mainly based on documentary evidence. The plaintiff closed its case and the defendant closed its case without calling any witnesses.

[8] In assessing the evidence on the quantum, I consider that the plaintiff relied on documents and the evidence of one witness, whose evidence was not contradicted. What has come out clearly in this case is that the defendant is not able to state which item from those listed by the plaintiff in respect of the work done is disputed. I consider that the defendant was able to inform the plaintiff to remove an item for environmental impact for the work which was not done on the first invoice dated 12 March 2015, that was delivered by the plaintiff; that the work done and amount thereof for the amended invoice dated 9

September 2015, was not disputed by the defendant, but the defendant informed the plaintiff that it was processing this invoice for payment.

[9] If the defendant's defence against plaintiff's claim was real, the defendant could be able to show that the plaintiff, was not entitled to charge for any of the items listed, if the work in respect of that item was not done. The work was done on the defendant's site, therefore, the defendant could easily have conducted an inspection on the site and indicated what work was not done from the work that the plaintiff claimed to have done. Based on these facts I find that on the probabilities, the plaintiff has proved that it is entitled to the amount claimed in the invoice.

[10] Accordingly the following order is made:

The defendant is to pay the plaintiff:

- (a) The amount of R1 526 745.00.
- (b) Interest on the aforesaid amount *tempore morae* from 22 September 2015 to date of payment.
- (c) Costs of suit, such costs to include the cost of senior counsel.

---

**MATHENJWA AJ**

DATE OF HEARING : 31 May 2021

DATE OF JUDGMENT : 09 June 2021

FOR THE APPLICANT : Adv AJ Troskie SC

Instructed by Mark Drummond Attorneys

Locally represented by Randles Attorneys

FOR THE RESPONDENT: Adv W S Kuboni

Instructed by Mdledle Incorporated