IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

[redacted]

SIGNATURE DATE: 23 June 2025

Case no: A2024-065297

In the matter between:

LABAT AFRICA LTD	First Appellant
SOUTH AFRICAN MICROELECTRONIC SYSTEMS (PTY) LTD	Second Appellant
SAMES PROPERTIES (PTY) LTD	Third Appellant
BRIAN VAN ROOYEN	Fourth Appellant
and	
NGUBANE ZEELIE INC	Respondent

CORAM: REID J, COWEN J AND WILSON J

JUDGMENT

WILSON J (with whom REID J and COWEN J agree):

1 The respondent, Zeelie Inc, is a firm of auditors retained by the first to third appellants, to whom I shall refer collectively as Labat. The fourth appellant, Mr. van Rooyen, engaged Zeelie Inc on Labat's behalf. The terms of the

engagement were recorded in a written agreement. Each of the first to third appellants bound themselves as co-principal debtors for any amount due to Zeelie Inc under that agreement. Mr. van Rooyen bound himself as surety and co-principal debtor for those amounts.

2 Zeelie Inc carried out its obligations under the agreement and billed Labat from time-to-time. It is clear from the record that Mr. van Rooyen regarded Zeelie Inc's auditors' fees as excessive, and in due course a dispute arose about the extent of Labat's liability for them. Zeelie Inc sued in the court below for just over R890 000 it said was due to it under the agreement, but which it alleged Labat had not paid.

3 Much of the evidence in the court below revolved around the reasonableness of Zeelie Inc's fees, and whether Labat had become liable for them merely because it had failed to challenge them within the period the agreement specified. A secondary issue was whether Mr. van Rooyen had acknowledged Labat's liability for the sum claimed in correspondence exchanged between the parties.

4 The court below rejected the contention that the fees were due because Labat had failed to dispute them. The respondent only faintly challenged that conclusion on appeal, and I have no doubt that the conclusion was correct for the reasons the court below gave.

5 However, the court below also found that Mr. van Rooyen had acknowledged Labat's indebtedness to Zeelie Inc, and that Labat was liable for R577 000 on that basis. That figure appears to have been reached by subtracting payments Labat made under the agreement from the total amount Zeelie Inc claimed.

6 Dissatisfied with that outcome, Labat and Mr. van Rooyen sought leave to appeal against the whole of the judgment of the court below. By the time the application for leave to appeal was heard in the court below, it was virtually common cause that the court had miscalculated the amount for which it gave judgment. The parties disagreed, however, about the extent of the miscalculation, and the court below was bound in those circumstances to grant leave to appeal on that point. The court nonetheless refused leave to appeal on Labat's other grounds. Labat then approached the Supreme Court of Appeal, which granted Labat leave to appeal to us against the whole judgment.

7 There is really only one issue on appeal. That is whether Mr. van Rooyen's correspondence with Zeelie Inc constituted an acknowledgement of Labat's indebtedness to Zeelie Inc in a definite or ascertainable amount. The court below held that it did, but it is hard to pin the judgment down to a specific amount or to a specific acknowledgement. The court contented itself with the observation that the correspondence which had passed between Mr. van Rooyen and Zeelie Inc revealed "the golden threa[d] of the defendants' unqualified intention to pay the account of the plaintiff". The court below concluded that certain portions of that correspondence evinced an intention to pay Labat's whole account, rather than "specific invoices or amounts" (see the judgment of the court below at paragraph 36).

8 I am unable to agree with this gloss on the correspondence. The record shows that, in an email dated 21 September 2011, Mr. van Rooyen acknowledged Labat's liability for Zeelie Inc's outstanding fees at that point in the sum of

R784 979.18 (see annexure C4 of Zeelie Inc's particulars of claim). It is common cause before us that this amount was eventually paid.

9 That however, was not all that Zeelie Inc ultimately claimed it was owed. Zeelie Inc continued to pursue Labat for further amounts it said were due under the agreement. The court below did not identify any acknowledgement of those additional amounts. Nor did it make any findings about what those amounts were.

10 Before us, counsel referred to a table placed before the court below in paragraph 14 of Zeelie Inc's heads of argument in the application for leave to appeal. We were told that the parties agree that the contents of this table are correct. The table reveals audit fees and interest which fell due well after Mr. van Rooyen made his acknowledgement of 21 September 2011, and which could not have been in Mr. van Rooyen's contemplation when he made that acknowledgment. If those amounts were due under an acknowledgement of debt, the acknowledgment could not have been made in the 21 September 2011 letter, and it was incumbent upon the court below to say where and how the acknowledgement was made.

11 This the court below could not do, since there is nothing on the record that discloses such an acknowledgement. Much of the argument before us revolved around a further letter Mr. van Rooyen addressed to Zeelie Inc on 13 January 2012. The letter appears on the record as annexure C7 to Zeelie Inc's particulars of claim. In that letter Mr. van Rooyen complained about "the quantum of fees being charged" by Zeelie Inc. He raised concerns about cost overruns, which he said had been sanctioned and billed for without prior

approval from Labat or Mr. van Rooyen. The letter stated that Mr. van Rooyen's business "cannot support this level of fees".

12 Mr. van Rooyen then went on to refer to "payment of the account". It is not clear on the face of the letter which account Mr. van Rooyen is referring to, but given that Labat had not at that stage discharged the amount acknowledged in the 21 September 2011 letter, it is a fair inference that this was what Mr. van Rooyen meant. Even if it was not, there is nothing on the record that would allow us to conclude which other account or what amount Mr. van Rooyen was talking about. Whatever it was, Mr. van Rooyen set out the various steps being taken to pay it. He then proposed a meeting to discuss "outstanding matters".

13 The court below appeared to conclude that the 13 January 2012 letter was part of the "golden thread" of correspondence in which Labat effectively acknowledged liability for whatever Zeelie Inc's account turned out to be. But an acknowledgement of that nature is unenforceable. An acknowledgement of debt is a clear and unambiguous admission of liability to pay a fixed or objectively ascertainable amount of money (see, for example, *Adams v SA Motor Industry Employers Association* 1981 (3) SA 1189 (A) at 1196G-H and 1198B-H and *Twee Jonge Gezellen v Land and Agricultural Development Bank of South Africa* 2011 (3) SA 1 (CC) at paragraph 15). An acknowledgement of liability to pay whatever someone else chooses to charge is not an acknowledgement of a fixed or objectively ascertainable sum.

14 In his written submissions, counsel for Zeelie Inc referred to a number of authorities which he claimed support the proposition that Labat may be bound

to honour an “implicit acknowledgement” to pay Zeelie Inc’s audit fees “even if the exact amount is disputed” (see the respondent’s heads of argument, paragraphs 32 to 34). None of the authorities cited provides any support for the propositions counsel advanced. Few if any of them touch on the nature of acknowledgements of debt, and I struggle to imagine why they were relied upon at all. I cannot in any event support the notion that an acknowledgment of debt can bind a debtor who disputes the amount of their indebtedness, save insofar as the dispute entails the acceptance of a lower but objectively ascertainable amount that the debtor intends to pay. It is not suggested that anything Labat or Mr. van Rooyen said in this case entailed such an acceptance.

15 The court below failed to appreciate that the “golden thread” it identified in the correspondence had been severed in the letter of 21 September 2011, which tied Labat’s acknowledgement of indebtedness to specific amounts. It is impossible to reconcile the 21 September 2011 letter with either an acknowledgement of further indebtedness that might have arisen after it was sent, or with an intent to pay whatever was demanded in terms of the agreement. Moreover, the 13 January 2012 letter cannot fairly be read as consistent with such an intent. Its gist was precisely the opposite: Mr. van Rooyen plainly wanted to limit his liability, and was irritated by what he saw as Zeelie Inc’s trigger-happy approach to billing.

16 Mr. van Rooyen’s 13 January 2012 letter was plainly not a clear and unambiguous admission of liability to pay a definite or objectively ascertainable sum of money. Nor can it be read together with any other

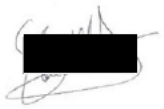
document to amount to that. The latest communication on the record that meets these requirements was Mr. van Rooyen's letter of 21 September 2011, which acknowledged a debt that everyone accepts was paid.

17 For all these reasons –

17.1 The appeal succeeds, with costs. Counsel's costs may be taxed on the "B" scale.

17.2 The order of the court below is set aside, and is substituted with the following order –

"The plaintiff's claim is dismissed with costs".



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 23 June 2025.

HEARD ON:	7 May 2025
DECIDED ON:	23 June 2025
For the Appellants:	HB Marais SC Instructed by Douglas Bennett Inc
For the Respondent:	AR van der Merwe Instructed by Wynand du Plessis Attorneys