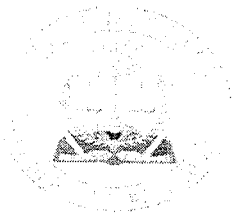


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
REPUBLIC OF SOUTH AFRICA



DELETE WHICHEVER IS NOT APPLICABLE

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

11/12/2015

DATE

N. Dam

SIGNATURE

Case No. 69082/2010

In the matter between

MINISTER OF ARTS AND CULTURE

PLAINTIFF

and

HELEN BREWER

DEFENDANT

JUDGEMENT

BAM AJ

[1] This matter came before me for trial on the 10th of September 2015. After the parties finished leading evidence, a request was made for them to be given time to prepare and submit heads of argument. Plaintiff's counsel specifically indicated that she may need to request the record for this purpose. The date of 8th October 2015 was agreed on as the final day for submission of the heads. Counsel for the Defendant duly filed the heads as agreed but counsel for the Plaintiff, despite several follow-ups, has to date not submitted the heads. There has been neither an explanation nor a request for an extension from the Plaintiff's counsel. In the premises I have decided to proceed with judgment on the basis of what was placed before court in the form of witnesses' testimony and bundles of documents.

[2] **BACKGROUND**

The Plaintiff has instituted the following claims against the Defendant:

1. Payment of the sum of R80 261.42 plus interest thereon *a tempore morae*;
2. Payment of the sum of R26 621.42 plus interest thereon *a tempore morae*;
3. Payment of the sum of R41 800.00 plus interest thereon *a tempore morae*;
4. Payment of the sum of R2 200.00 plus interest thereon *a tempore morae*;
5. Payment of the sum of R79 600.00 plus interest thereon *a tempore morae*;
6. Payment of the sum of R103 110.53 plus interest thereon *a tempore morae*;
7. Payment of the sum of R180 671.80 plus interest thereon *a tempore morae*;

8. Payment of the sum of R2 800.00 plus interest thereon *a tempore morae*;

Alternatively, return of a Samsung Digimax camera
9. Payment of the sum of R9 344.20 plus interest thereon *a tempore morae*;

Alternatively, return of assets (office furniture and equipment)
10. Payment of the sum of R80 693.00 plus interest thereon *a tempore morae*;
11. The return to Plaintiff of all intellectual property, reports, invitations, stakeholder lists, industry role players (sic) and action plans generated in the project.

Naturally the Plaintiff has also claimed the costs of suit under each claim. Insofar as Claims 8 and 11 are concerned, counsel for the Plaintiff conceded during the trial that same could not stand as there was a signed acknowledgment of receipt, by the Plaintiff's officials, of the items whose return was claimed in the alternative. I will therefore not deal with these two claims in my judgment.

- [3] I find it necessary to give a brief background of the circumstances that gave rise to the institution of action by the Plaintiff in this matter, particularly on the project in relation to which these claims were instituted.
- [4] In September 2005, the Plaintiff in collaboration with the Technical Production Services Association (TPSA) convened an Indaba at which industry role players were invited to deliberate on issues of transformation and compliance amongst other challenges. The TPSA is a voluntary association of members who operate in the Live Entertainment and Events Industry. It looks after the members interests within the production services industry; monitors compliance with international ethical and safety standards and promotes knowledge and skills development for its members. At the conclusion of this Indaba, an Events and Technical Services Task Team was established to

oversee an action plan that emerged from the indaba deliberations. The Task Team was mandated to develop plans relating to Compliance and Quality Assurance, Partnerships and Co-ordination, Transformation and Empowerment, Skills and Human Resources Development as well as Sustainability within the arts, production, entertainment and events industry. Members of the team were to develop a national structure representing role players in the industry after extensive consultations with relevant associations and organisations. This they would achieve mainly through nationwide roadshows; and the Plaintiff was to provide funds for the whole exercise. They had to complete the whole mandate by March 2008. I will henceforth refer to the Events and Technical Services Task Team as "the Task Team".

- [5] The Defendant was elected Chairperson of the 13-member Task Team. Though her position has been referred to in some documents and during evidence as that of a CEO, I prefer to address her as the Chairperson. Her deputy was one Jameson Hlongwane from the TPSA. The Plaintiff seconded some of its officials to participate in the project. Both the Defendant and Mr Hlongwane started working immediately from September 2005 using their own resources in a bid to get the task team going until some funds were made available by the Plaintiff in March 2006.
- [6] The Task Team drew up a budget in the amount of R3,580,000.00 (three million, five hundred and eighty thousand rand) for their activities and presented it to the Plaintiff. The Plaintiff approved only R2,996,400.00 (Two million, nine hundred and ninety-six thousand and four hundred rand). On the 2nd of November 2006, a "Memorandum of Agreement With Regard to Transfer Payments" was entered into between the Plaintiff and the Task Team. The Defendant, in her capacity as chairperson, signed on behalf of the Task Team. In terms of this Memorandum, the approved budget amount was to be paid out in tranches following completion of certain milestones and submission of reports pertaining thereto:

R1,000,000.00 after receipt of signed Memorandums;

R1,000,000.00 after receipt of the first progress and financial report;

R796 400.00 after receipt of the second progress and financial report;

R200 000.00 after Department (Plaintiff) approves/accepts the final report and audited financial statements.

- [7] The instruction at the top of the Memorandum of Agreement, is typed in Capital letters and reads as follows:

"ALL UNDERLINED SPACES MUST BE DULY COMPLETEDEVERY PAGE OF THIS AGREEMENT AND ITS ANNEXURES MUST BE INITIALLED BY BOTH PARTIES AT THE FOOT OF THE PAGE."

Under the heading "Interpretation", Agreement is defined as "this Agreement and all schedules and annexures thereto".

The significance of these citations will become apparent when I consider the evidence led in court further on in my judgment. I must mention that the copy handed in to the court is not legible in parts especially the paragraph numbering. I have tried my best to follow the sequence from the few legible numbers I could discern.

- [8] The material and relevant terms of the Memorandum of Agreement are as follows:

- Paragraph 3.1: "The financial support is granted by the Department to the Beneficiary for the presentation of the project Events and Technical Services Task Team (hereinafter referred to as the Project).....the Republic of South Africa from 1/10/06 to 31/03/08 in accordance with the programme and/or having the content as set out on the Quotation (Annexure A hereto)".
- Paragraph 3. 2: "The allocation shall be used in a prudent and responsible manner exclusively for the project and solely for purposes stated in the Beneficiary's quotation"

There is also a provision that allows the Plaintiff to make a written request to inspect the books of accounts of the Task Team project "in order to ensure that the Agreement is being duly complied with and that the

allocation is being correctly utilised". In addition, at least two officials could be sent to check on any facet, local or international, of the project and were to be allowed unimpeded access. This was in addition to the Task Team having to submit periodical reports to the Plaintiff so as to facilitate the release of further funds.

- [9] The Task Team mandate or action plan was broken up into five projects and the Task Team members were allocated a project either each or in pairs – presumably in accordance with their respective areas of expertise in the industry. The Defendant, in her capacity as Chairperson, did not have a specific project allocated to her but seems to have been given an overall management and co-ordination role which included amongst other things, compiling progress and financial reports needed by the Plaintiff. She is a member of the MICE (Meetings, Incentives, Conferences and Exhibitions) academy.
- [10] The Task Team members produced a document spelling out their terms of reference with supporting documents relating to disbursements of funds from the team's bank account. They also set up office with an administrator to run it and elected a finance committee to handle the project transactions and members' claims. The Defendant was part of this finance committee and she later on appointed a bookkeeper/accountant to ensure that the books were properly kept for purposes of reporting to the auditors when the appointed time came.
- [11] Insofar as remuneration was concerned, the Defendant, in her capacity as chairperson was awarded a specific allocation in the budget in the amount of R625 000.00 for the duration of the project, which was worked out to be R25 000.00 per month for the period from February 2006 to March 2008. One would assume that the basis for this payment was properly canvassed as the budget emanated from the Task Team itself and was not imposed by the Plaintiff. The Project leaders on the other hand would receive R10 000.00 per month each, plus they could claim honoraria of R500.00 per hour for a maximum 5 hours per day for project work as well as R1 500.00 per meeting

attended including travelling expenses. The honoraria were not extended to the Defendant.

- [12] The Budget itself is a one page document with limited details appearing under 7 headings: Administration, Marketing and Communication, Task Team, Road Show (Regional), Transcription and Transcribing, Reports Compilation and Direct Expenses. Besides this document, there is also another titled Task Team Payments & Reimbursements Explanation which appears to be a guideline on how project funding will be disbursed. The claims were to be submitted through a form called Reimbursement / Sundry Claim. Provision was made on this form for the signatures of the claimant, the project leader as well as one or two signatories who would verify the claim. Of significance on this form, is a note at the bottom that reads as follows: "Team members are appointed in their individual capacities hence individuals will be reimbursed – as shown in (A) – not organisations. Each claim for reimbursement had to be accompanied by supporting invoices, receipts etc. as proof of the amount due. The terms of reference indicate that the Finance sub-committee would approve the claims in their monthly meetings and any two signatures provided to the Administrator would serve as prime indicator of payments to be made. The Administrator would in turn verify the payment schedules.

THE PLAINTIFF'S CASE

- [13] The Plaintiff's claims arise out of the contents of a forensic report allegedly commissioned by the Plaintiff after some members of the Task Team went to complain about the Defendant's conduct of the financial affairs of the team. These complaints were received after the final report had been handed in and payment of the last tranche in the amount of R200,000.00 had been authorised.
- [14] The Plaintiff alleges that the Defendant fraudulently paid herself money over and above what was due to her in terms of the budget. The Defendant allegedly claimed the amounts using her registered company, Compromark (Pty) Ltd which is a registered VAT vendor, contrary to the stipulation that

members of the task team were engaged in their personal capacities. Claim 10 in fact relates to the VAT amount charged by the said company.

Counsel for the Plaintiff stated that not only did the Defendant place herself in a conflicted position through being the only signatory to the Task Team's bank account, she also fraudulently charged the Task Team for items that had nothing to do with its mandate. Furthermore, it is alleged that the Defendant concealed the nature of some of her extraneous claims under the umbrella heading of "miscellaneous".

[15] The Plaintiff's first Witness, Mr Collen Hlatshwayo, who joined the Plaintiff's service as an employee in 2007 could only offer assistance on events that took place from that year. He was not there when the Task Team was established in 2005. He testified that in principle, he did not have a problem with the amount received or paid to the Defendant. His only concern was the fact that the extra work done by the Defendant should have been provided for in writing and incorporated into the Memorandum of Agreement. Insofar as the claim amounts in the summons were concerned, Mr Hlatshwayo could not confirm their accuracy or basis except to say that they were obtained from a forensic report that the Plaintiff had commissioned after the close of the project. This step was apparently adopted after some of the Task Team members had approached the Plaintiff to complain about the Defendant's conduct of the affairs of the Task Team, particularly the financial affairs. Mr Hlatshwayo admitted that he signed acknowledgement of receipt for the Camera and project documents. His signature appears on the letter dated 6 October 2008 with a subject heading "Delivery : Task Team Office Contents", that listed items and documents in boxes (including the Digimax camera) and even confirmed that files contained in any electronic format had been deleted from computers, CDs, memory sticks and the like.

[16] The Plaintiff's second witness, Mr Glen Masekoane, who was present when the action plan was conceived and implemented, also made references to the forensic report as the source of the claims against the Defendant. He

conceded that the project had been successfully completed in time and there was no overspend as far as the presented budget was concerned. He said he could shed no light into the internal working arrangements of the Task Team because he had not been a part thereof but confirmed that the team had a discretion on how to run the project as long as it was within the prescripts of the Memorandum of Agreement. When asked in cross examination whether prudence meant doing the work as cheaply as possible and then returning some of the unspent money to the Plaintiff his response was that the Plaintiff was not about "cutting corners" with regard to projects. Mr Masekoane also indicated that the Plaintiff had a duty in terms of the Public Finance Management Act, (Act No.1 of 1999), usually referred to as the PFMA, to ensure that public funds were utilised in a proper manner and for the intended purposes. He testified that it was improper for the Defendant to have received the extra payment over and above what was in the budget.

THE DEFENDANT'S CASE

- [17] The Defendant testified that she signed the Memorandum of agreement on behalf of the Task Team, but also that in her capacity as chairperson she considered herself personally bound by its contents. She had believed that she was personally responsible for the successful completion of the team's mandate.
- [18] The Defendant denied being indebted to the Plaintiff as alleged and indicated that the amounts over and above the R625 000.00 allocated to her, had been properly earned. She testified that she had had to perform the work of some of the project leaders who were very lax in their approach to their tasks. The Defendant testified that because she had to do all this extra (project) work, she was entitled to claim payments. She apparently reported to the Plaintiff's officials that some of the projects leaders were not pulling their weight as it were, and thus they were aware that she was doing these people's work.

She testified that she had initially organised for the Task Team to get an office with necessary furniture and equipment so they could start functioning even before the budget was approved. She had to attend some events as representative of the Task Team and also meet with and entertain some media people in order to advance the objects of the project so that information reached as many stakeholders as possible. She had also thought it appropriate to spend some of the money on refreshments for volunteers who assisted during the roadshows. The Defendant testified further that she had thought it prudent to appoint a bookkeeper /accountant so the latter could become part of the process of verification of claims and payments to members and service providers and also assist to provide correct information for reporting purposes. She testified that whatever she did was aimed at achieving the mandate within the stipulated period and available funds. The Defendant further testified that she drafted the terms of reference and financial guidelines to promote transparency with no input from the Plaintiff. She denied having acted fraudulently.

- [19] Insofar as submitting claims using her company's name, the Defendant testified that she was not aware that she could not do so because initially she was not involved in project work. She had later devoted a lot more of her time to the projects than was initially envisaged and her company could not generate any income in her absence. She added that she had obtained professional advice from the auditors beforehand and was advised to charge the VAT as the company was a registered VAT vendor otherwise there would be a problem when it came to accounting to SARS.
- [20] The Defendant testified that she submitted periodical reports as per the Memorandum and these were accepted by the Plaintiff. It is only with the final report that she was advised to get a consultant to tidy it up because, according to Mr Masekoane, it could not be handed over to the minister in the form it was. It was more a question of form than content. The Defendant testified that she had no experience in that line of reporting and was comfortable that someone with more experience could do what was necessary. She recalled that after submission of the final report, the Deputy

Minister sent a congratulatory message to her and the team for a job well done.

- [21] Counsel for the Plaintiff took the Defendant through several documents in a bid to get an explanation on how the amounts claimed were made up. The Defendant was able to explain most of the expenses. Some she could not remember as the transactions happened a long time ago and she had already handed over the project documents to the Plaintiff. Regarding the actual claim amounts in the summons, the Defendant could also not offer any assistance to the court because she had not seen the forensic report from which they were extracted and neither had she been invited to respond to any allegation or clarify queries during the investigation.
- [22] Concerning the disposal of the Task Team furniture, the Defendant testified that she had obtained 3 quotations and her company's quotation was accepted. The money was paid into the Task Team bank account. It is not clear what adjudication process was followed in this regard, save to say the other quotations had less items than that of the Defendant's company and the amount accepted was only R50.00 more than the second highest quote. The Defendant had testified that the office furniture was in any event property of the Task Team and did not belong to the Plaintiff. The other bidders were not interested in small office items and only wanted furniture and equipment.

THE LAW

- [23] It is a trite principle of our law that a party who alleges bears the onus of proving the allegation. In civil cases, this proof has to be on a balance of probabilities, and even though the standard is not as onerous as that of proving criminal charges, it is nevertheless expected of a Plaintiff to convince

the court that the claim against the Defendant has a solid basis. This is sometimes referred to as proving a prima facie case.

In National Employers' General v Jagers, 1984 (4) SA 437 (E) at 440D Eksteen J had this to say regarding onus:

"It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected..... If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false."

- [24] To succeed in an action based on fraud, the Plaintiff has to prove the existence of the elements of the offence. Fraud is an intentional misrepresentation of a material existing fact made by one person to another with knowledge of its falsity and for the purpose of inducing the other person to act, and upon which the other person relies with resultant injury or damage. It is a deliberate deception to secure unfair or unlawful gain; and is calculated to prejudice another (see Ndwambi v The State [2015] ZASCA 59).

ANALYSIS OF THE EVIDENCE

- [25] It is not in dispute that the Defendant received payments totalling an amount over and above the R625 000.00 she was allocated in the budget. It is also not in dispute that contrary to note on the Task Team's Reimbursement

/Sundry Claim form, the Defendant claimed her payments using her own company and charged VAT on the said claims. Counsel for the Defendant states that the total amount paid to her, if one follows the budget and payment guidelines is R1,048,691.00 (one million and forty-eight thousand and six hundred and ninety-one rand). I am not in agreement with this amount because the calculation includes the R625 000.00 which was not based on an hourly rate, but was rather a basic amount due to the Defendant at the rate of R25 000.00 per month, same as project leaders were entitled to a basic of R10 000.00 per month plus the agreed disbursements and honoraria.

[26] The total amount of claims against the Defendant in monetary terms is R606 742.17. The evidence from both witnesses for the Plaintiff was that they were not aware of how the amount was arrived at, save to say it was taken from the forensic report that was commissioned after finalisation of the mandate and acceptance of the final audit report from the Task Team. Counsel for the Plaintiff went through various claims and statements in the bundle, interrogated the Defendant on these, but there was no evidence to say these amounts had been obtained or paid out fraudulently. It was not the Defendant that grouped transactions under "Miscellaneous". There was an accountant who, when receiving a transaction she could not allocate to an account, would then place it under miscellaneous. It is possible that the Defendant, as the overall administrator, would have had some input, but she herself testified that she was not a professional bookkeeper.

[27] The evidence that was presented before court at most proved that internal controls of the Task Team were not always adhered to completely, but nothing points to fraudulent intent. I say this because even some of the claims by the other team members were paid out without the requisite backing vouchers. This team was a temporary structure that was left to regulate itself without any supervision or guidance from the Plaintiff, other than requests for reports, which it appears to me were accepted without any scrutiny or queries because funds were released up until the last tranche. It appears that even the powers of inspection that the Plaintiff had acquired through the Memorandum of agreement were never exercised. In this regard I refer to Mr

Mashegoane's statement that he was not aware of the internal issues of the Task Team as he not a part thereof but an employee of the Plaintiff. Yet he was in court to support the Plaintiff's case that the Defendant fraudulently overpaid herself. Had the Plaintiff scrutinised the periodical reports, it might have been possible to notice that claims were being made through a company, for instance, and nipped that in the bud if it was improper. One also wonders how effective were the seconded officials in this collaboration or if ever they stayed on to see the mandate to the finish.

- [28] Insofar as finances are concerned, it is not clear what became of the finance committee. Suffice to say the Defendant ended up being chairperson/co-ordinator, project leader, and financial manager within a very short space of time. Defendant's testimony that she decided to "run with the project" and take it upon herself to complete the mandate in the face of non-performance by some of the project leaders was not disputed.
- [29] Counsel for the Plaintiff made several references to the Memorandum of Agreement clauses which the Defendant allegedly failed to comply with. The Memorandum of Agreement which is the document that primarily set the tone for the relationship between the Plaintiff and the Task Team, and by implication, the Defendant; leaves a lot to be desired. It appears as if it was drafted in a rush and leaves gaping holes insofar as the interpretation of some of its clauses is concerned. There is a noticeable lack of detail for a document of its importance.
- i) The instruction below the heading says the Agreement and all attachments thereto must be initialled by both parties, but none of the documents, particularly the budget, has been initialled. So one would be inclined to conclude that the budget/quotation was not even at the table when the Memorandum was signed and initialled. In addition, as rightly observed by counsel for the Defendant, the amounts on the Memorandum and Budget

Allocation are different, and therefore the two documents cannot be reconciled with each other.

- ii) Secondly the Memorandum requires that the funds be used "in a prudent and responsible manner exclusively for the project and solely for purposes stated in the beneficiary's quotation" but there is no guideline as to what constitutes a "prudent and responsible manner". The Memorandum uses the word "quotation" when referring to the budget allocation, which leads one to believe that the drafters were also aware that the funds would be expended on other items related to the mandate that were not specifically stated in the document. In any event, a budget is just a forecast and some departure from it is to be expected.
 - iii) The Task Team was not made aware of Plaintiff's accountability requirements in relation to public funds as per the PFMA and it is therefore not totally absurd to agree with the Defendant that she was left to use her own discretion. That being the case, the question that would arise is whether or not the said discretion was used properly for the achievement of the mandate. It is my view that it was.
- [30] The Plaintiff in my view, failed to exercise the requisite oversight function it had allocated to itself in the agreement. This lack of oversight is more glaring when one considers that there is an allegation in the summons that the funds were deposited into the Defendant's personal bank account instead of that of the Task Team. The crux of the allegation is that the Defendant knowingly handed over the incorrect account details. Had this been true, it would have constituted a reckless disregard for the safety of public funds on the part of the Plaintiff's officials to have such huge amounts of money transferred into an account whose details had not been verified. The account details appear on the Memorandum of agreement itself and the account name is clearly stated as E & T S Team. I agree with counsel for the Defendant that indeed there are a few signs indicating sloppy investigative work. Counsel for the Plaintiff brought up the bank account issue in court and one would have

thought that sufficient time had passed since the action was instituted to have given them the opportunity to realise that the allegation had no basis.

- [31] With regard to the VAT, it is still not clear what the amount involved is. In any event the Defendant's company is registered for VAT and would have gotten into serious trouble with SARS for non-payment. It must be accepted that other transactions entered into on behalf of the Task Team with other suppliers also attracted VAT, hence it is difficult to separate the amounts with certainty. The Plaintiff ought to have presented the specific payments that resulted in the amount of R80 693.00 being charged, but attached only one invoice with a VAT amount of R3 773.00. I agree with counsel for the Defendant that the money paid over SARS has gone back into the public purse and because it collected by a body representing the government of which the Plaintiff forms a part.
- [32] The office furniture that was taken by the Defendant was bought with the Task Team funds, so it is not clear why the Plaintiff asserts ownership over it. Even if the items did belong to the Plaintiff, value was paid for them. In this regard the Plaintiff should have tendered the amount of R4 700.00 paid by the Defendant into the Task Team's bank account on 4 May 2008. Instead, a claim is made for the cost price without regard to the fact that these items had become second hand goods, having been bought two years back.
- [33] Plaintiff's counsel valiantly attempted to justify the various claims by reference to several documents and statements in the bundle none of which supported the allegation that the funds were not used in a prudent and responsible manner. The amounts were there for all to see, and even those under miscellaneous were explained away by the Defendant. It is thus difficult to find any merit in the allegations that the Defendant acted fraudulently in receiving or paying herself more than what was agreed on the budget. I will readily admit that the financial record keeping was not perfect, but nothing was hidden. To blame the Defendant for everything is, with respect, unfair as there was a Finance sub-committee and if it folded, one would have thought the reasons therefore would be stated as there is an allegation that the Defendant

was the only signatory to the team's bank account. It would have also been helpful to have had the accountant called as a witness to explain how, for instance, verifications were made and also why some transactions were classified under miscellaneous. It appears to me that it was more convenient to target the Defendant because of the disgruntled team members' accusations rather than do a proper investigation involving all the relevant parties. The Defendant did not act alone; she was part of a collective.

- [34] Of significance at this juncture is the undisputed evidence that the Plaintiff suffered no loss; the mandate was completed successfully in time and the Defendant and her team even received praise from the Deputy Minister for the way they carried out the mandate. Furthermore, the team managed to operate within the approved budget which was less than what they had requested. The final audit report was accepted; save for the requirement that it be professionally put together to suit the minister; hence payment of the last tranche of R200 000.00 per the agreed schedule was made. It is still not clear why the forensic investigation was carried out.

CONCLUSION

- [35] The court has a duty to promote a fair adjudication. When therefore during a civil or criminal trial, material evidence known to exist is not presented, the court tries to attribute the failure to produce such evidence to the party who naturally would have produced it. In this case, not only is the forensic report material, it forms the basis for the claims against the Defendant. If it so supported the Plaintiff's claim to this extent, it is baffling why it was not produced. None of the financial statements referred to by the Plaintiff at the hearing of this matter gives a picture that tallies with the accusations of fraud. A defendant does not have to prove her innocence in the face of a non-convincing case by a plaintiff.
- [36] In my view, what was placed before court has necessarily failed to remove the uncertainties with regard to the amounts claimed by the Plaintiff. The

witnesses called in support of the Plaintiff's case were also not helpful in this regard because they referred to the very same forensic report that was not before court. Reference to the PMFA could not advance the Plaintiff's case any further because the Task Team, and by implication the Defendant, were not made aware of the PMFA requirements. The Memorandum of Agreement is also silent in this regard. The project was not a government tender that comes with all the necessary stipulations and legal requirements to be met by tenderers, and the Plaintiff should have been more cautious and ensured that proper guidelines were in place and followed.

- [37] Under the circumstances, the Plaintiff has failed to discharge the onus of proving its claims on a balance of probabilities. The Defendant has adduced sufficient evidence to rebut the Plaintiff's prima facie evidence in relation to both allegations of fraudulent conduct and the amounts claimed.

ORDER

In the result, I make the following order:

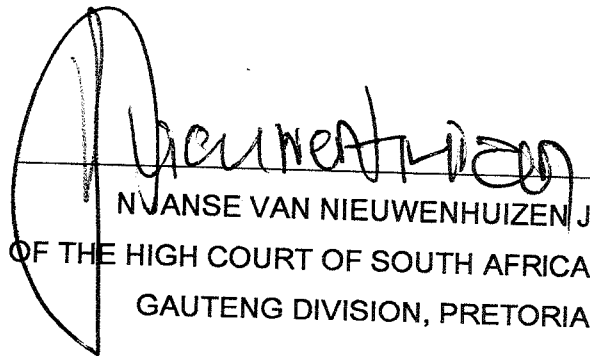
1. Claim 1 for payment of R80 211.21 is dismissed
2. Claim 2 for payment of R26 400.00 is dismissed
3. Claim 3 for payment of R41 800.00 is dismissed
4. Claim 4 for payment of R2200.00 is dismissed
5. Claim 5 for payment of R79 600.00 is dismissed
6. Claim 6 for payment of R103 110.53 is dismissed
7. Claim 7 for payment of R180 671.80 is dismissed
8. Claim 9 for payment of R9 344.20 is dismissed
9. Claim 10 for payment of R80 693.00 is dismissed
10. The Plaintiff is ordered to pay the taxed costs of this action.



L BAM

JUDGE OF THE HIGH COURT OF SOUTH AFRICA (ACTING)
GAUTENG DIVISION, PRETORIA

I agree,



NVANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

