

The Competence of a Deponent Who Acquires Knowledge Through Documentary Perusal

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INTRODUCTION

South African courts have recognised that a deponent may validly depose to an affidavit despite not possessing direct personal involvement in every aspect of a dispute. In litigation, knowledge is frequently acquired through the examination and perusal of relevant documentation, including agreements, correspondence, financial records, resolutions, and/or transactional documents.

The court in the matter of *HBGSchindlers Attorneys and Notaries v Glen Acre 16 (Pty) Ltd and Another ("Glen Acre")*¹ reaffirmed the principle that a deponent may possess sufficient knowledge of a matter where such knowledge has been obtained through careful consideration of the documentary record. The court acknowledged the practical realities of litigation, particularly in matters involving corporate entities and complex commercial transactions, where evidence is often derived from documentary material rather than personal participation.

The issue arose as a point in *limine*, with the respondent challenging the competency of a candidate attorney to depose to a verifying affidavit in support of a summary judgment application.

In rejecting the challenge, the court considered the development of the law from the strict formulation in *Maharaj v Barclays National Bank Ltd ("Maharaj")*² to the more practical, substance-over-form approach adopted in subsequent decisions.

THE ROLE OF DOCUMENTARY KNOWLEDGE IN AFFIDAVIT EVIDENCE

Affidavits establish evidence placed before the court under oath. While personal knowledge remains important, courts have recognised that such knowledge may be legitimately acquired through the perusal of relevant records and documentation.

In *Maharaj*, the court held that a deponent to a summary judgment affidavit must be able to "swear positively to the facts". This formulation has frequently given rise to technical challenges based on whether a deponent possesses direct personal knowledge of every fact underlying the claim.

Subsequent decisions adopted a more practical approach. In *Barclays Western Bank Ltd v Bill Jonker Factory Services (Pty) Ltd*³ and later in *Stamford Sales & Distribution (Pty) Ltd v Metraclark (Pty) Ltd*⁴, the courts recognised that a deponent need not have personal knowledge of every historical fact comprising the cause of action. Rather, the enquiry is whether the deponent possesses sufficient knowledge of the material facts, including knowledge acquired through possession and consideration of the relevant documentation.

Applying these principles, the court in *Glen Acre* accepted that the candidate attorney had acquired sufficient knowledge through her involvement in the litigation and her familiarity with the relevant records, including the fee agreement, invoices, demand and certificate of balance. The court therefore found that she was competent to verify the claim and depose to the affidavit.

Accordingly, the competency of a deponent is not determined solely by direct participation in the events giving rise to the dispute, but rather by whether the deponent has sufficiently acquainted themselves with the underlying facts and documentation so as to place reliable evidence before the court.

THE REQUIREMENT OF PARTICULARITY AND DOCUMENTARY SUPPORT

The court in *Glen Acre* further emphasised that affidavits must contain substantive factual allegations supported by objective documentary material. Mere bald denials or vague assertions are insufficient.

In this regard, the court referred to the principles articulated in *Breitenbach v Fiat SA (Edms) Bpk* ⁵, where it was held that a party must set out the material facts with sufficient particularity to establish a genuine dispute capable of constituting a defence.

The court also relied on *NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd* ⁶, wherein the Supreme Court of Appeal stated that “a defendant cannot content him or herself with bald denials. Something more is required.”

The judgment accordingly reinforces the principle that courts will attach greater evidentiary weight to affidavits grounded in documentary records than to unsupported and self-serving allegations.

PRACTICAL SIGNIFICANCE IN COMMERCIAL LITIGATION

The principle recognised in *Glen Acre* is of considerable importance in modern litigation. Corporate representatives, trustees, liquidators, attorneys, candidate attorneys and officials frequently depose to affidavits on behalf of entities after acquainting themselves with the relevant records and documentation.

The decision confirms that documentary familiarity and a proper understanding of the contents of the records may provide a sufficient basis upon which to depose to an affidavit. Provided that the affidavit is supported by objective documentary evidence and contains adequate factual detail, courts will generally accept that the deponent possesses the requisite knowledge of the matter.

¹ *Hbgschindlers Attorneys and Notaries v Glen Acre 16 (Pty) Limited and Another* (2025/045713) [2026] ZAGPJHC 371 (19 March 2026)

² *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A)

³ *Barclays Western Bank Ltd v Bill Jonker Factory Services (Pty) Ltd and Another* 1980 (1) SA 929 (SE)

⁴ *Stamford Sales & Distribution (Pty) Limited v Metraclark (Pty) Limited* 2014 JDR 1125 (SCA)

⁵ *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T)

⁶ *NPGS Protection & Security Services CC and Another v FirstRand Bank Ltd* 2020 (1) SA 494 (SCA)



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