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Settlement Agreements under Constitutional Court Scrutiny

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Case: Mafisa v Road Accident Fund and Another (CCT 156/22) [2024] ZACC 4;2024 (6) BCLR 805 (CC);2024 (4) SA 426 (CC) (25 April 2024)

INTRODUCTION

This is a case note on the case of Mafisa v Road Accident Fund and Another (CCT 156/22) [2024]

BACKGROUND

On or about **31 January 2016** the applicant, who was 29 years old at the time, was a passenger in a motor vehicle when the driver of that vehicle collided with a tree. As a result, the applicant suffered bodily injuries which included a fracture of the left proximal humerus, abrasions of the lower back and lacerations of the scalp. He suffered damages in the form of medical expenses, loss of earnings and general damages. According to him, the accident was caused by the sole negligence of the driver.

LITIGATION HISTORY

The applicant issued summons in the High Court against the Road Accident Fund ("**RAF**") and claimed for past and future medical expenses, past and future loss of earnings and general damages. The RAF filed its plea and disputed the liability and quantum aspects of the claim. The RAF's attorneys subsequently withdrew as attorneys of record. The matter was enrolled for hearing on **11** and **12 May 2021**. On the first day of hearing, the parties requested that the matter stand down for settlement negotiations.

The next day, the judge was advised that the parties had concluded a settlement agreement. There was no hearing and no evidence was adduced. The parties approached the judge and requested to make the settlement agreement an order of Court. The judge, without elaborating further, indicated that she was not entirely satisfied with the terms of draft order. She reserved judgement to consider the proposed settlement.

The High Court found the industrial psychologist's report unpersuasive and held that it failed to prove that the applicant sustained damages with respect to past and future loss of earnings. The High Court dismissed the application with costs.

The applicant was aggrieved and appealed, initially to the high court. The application for leave to appeal to the high court was unsuccessful. An application to the President of the Supreme Court of Appeal for reconsideration was unsuccessful as well.

Still aggrieved, the applicant appealed to the Constitutional Court. In the apex court the Personal Injury Plaintiff Lawyers Association (PIPLA) was admitted as amicus curiae. The General Council of the Bar of South Africa was approached by the Court to appoint Counsel to make submissions on the issue of the High Court's power to investigate the merits of a settlement.

LEGAL QUESTION

Whether the High Court has the power to unilaterally amend a settlement agreement without allowing the parties involved a chance to respond, effectively binding them to an agreement that they did not intend to make.

CONSTITUTIONAL COURT'S INTERPRETATION

The applicant argued that the matter raises two constitutional issues. Firstly, that the unilateral alteration of a settlement agreement without affording parties an opportunity to be heard amounts to a procedural and substantive irregularity. PIPLA reiterated that jurisdiction is determined by the dispute between the parties and that a compromise, when embodied in a court order, terminates the litigation between the parties and thus has the effect of *res judicata*. PIPLA argues that the unilateral variation of the draft order submitted by the parties infringed the applicant's right to contract freely and also offends and disregards the parties' right to settle their dispute voluntarily on mutually agreeable terms.

In this regard, the Constitutional Court held that a Court is not empowered to unilaterally amend a settlement agreement. When asked to make a settlement agreement an order of court, this Court's decision in *Eke v Parsons [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC)* demands that the court ensures that the agreement was competent and proper before it can be given a seal of a court order. A settlement agreement will only be competent and proper if (i) it relates directly or indirectly to the dispute between the parties; (ii) is in accordance with the constitution and the law and is not contrary to public policy; and (iii) holds some practical and legitimate advantage.

In this case, the Constitutional Court held that the High Court did not inform the parties of its concerns about the proposed quantum of damages, instead stating on 12 May 2021 that it needed time to consider the settlement. The judgment by the high court was handed down on 15 May 2021 without allowing the parties an opportunity to address any concerns, leaving them unaware and surprised by the outcome. This violated the principle of *audi alteram partem*, which requires courts to hear both sides before making an adverse order.

On the second issue, the Constitutional Court affirmed that as a general rule, a judge shouldn't interfere with the terms of the settlement agreement, however, a judge is entitled to raise concerns in certain circumstances. The judge has the discretion to either refuse to make a settlement agreement an order of court or to inform the parties of his or er concerns about it. If they decide to address the concerns and the judge is satisfied, the agreement can be made an order of court. If not, the judge will refuse to do so. However, a refusal to make the agreement an order does not invalidate the settlement; its validity depends on its terms and the applicable law. The Constitutional Court restated the principle that judges don't have free reign and ought to exercise restraint to ensure that there is no undue imposition on parties' contractual freedom. In this case, the Court was asked to make a settlement agreement an order of court. If the Court was hesitant, it should have communicated its concerns to the parties, allowing them to decide whether to address those issues.

CONCLUSION

The Constitutional Court upheld the appeal and set aside the order of the High Court, as there was no evidence of impropriety in relation to the settlement agreement. It was held that the High Court exceeded its jurisdiction by unilaterally amending the settlement agreement, which was improper, without a hearing. Since the parties had already settled the Court should not have considered the actuarial and industrial psychologist's reports to reject the agreed settlement for loss of earnings, as these reports were not formally before the Court.

Additionally, the Court did not communicate its concerns to the applicant or the RAF, preventing them from deciding whether to provide further evidence. If the Court had raised its concerns, the parties could have elected whether to address such concerns or not. The order of the High Court was replaced with the original settlement agreement between the parties, which was made an order of Court.

Please note: Each matter must be dealt with on a case-case basis, and you should consult an attorney before taking any legal action

VALUE

This case examines the reasons why a Court cannot unilaterally amend a settlement agreement, emphasising the principles of contractual freedom and the parties' right to settle and compromise their dispute without court interference.

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