

Can Settlement Agreements Not Arising From Pending Litigation be Made an Order of the Court?

Alana v Monoline Investments 8 Trust (2020/37977) [2025] ZAGPJHC 47 (23 January 2025)

INTRODUCTION

Reaching a settlement (and concluding a settlement agreement) can allow parties to dispose of a dispute in a timeous and cost-effective manner.

Many settlement agreements include a clause allowing one or both parties to make the settlement agreement an order of court, upon the happening of a certain event (or in the ordinary course).

This article considers the requirements that a court will consider before ordering that a settlement agreement be made an order of court, with reference being made to applicable caselaw.

BACKGROUND

In the matter of *Alana v Monoline Investments 8 Trust*¹, the Applicant instituted proceedings seeking that the settlement agreement entered into between herself and the Respondent be made an order of the court.

The settlement agreement in question related to a payment dispute. The wording of the settlement agreement, *inter alia*, allowed the Applicant to apply to have the settlement agreement be made an order of court in the event of breach by the Respondent.

The Respondent opposed the application stating that the court had no power to grant an order rendering the settlement agreement an order of the court due to the fact that no prior litigation had commenced between the parties.

CONSIDERATIONS AND ORDER OF THE COURT

In consideration of the relief sought in this matter, Judge Dlamini J, relying on the principles previously set out in *Avnet South Africa (Pty) Limited v Lesira Manufacturing (Pty) Limited and Another*² while following the

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Constitutional Court's decision in *Eke v Parsons*³, confirmed that an order of the court would only be made if it were competent and proper. In this regard, Judge J Dlamini explained that he was to consider the following information when exercising this discretion:

- the settlement agreement must relate to a *lis* between the parties;
- the settlement agreement being made an order of court must not be objectionable in law in any way and must accord with the Constitution and the law; and
- the order so sought must hold some practical and legitimate advantage to the parties.

Upon attending to the aforementioned considerations, the Court held that as there was no pending litigation between the parties, in line with the judgment handed in *Eke v Parsons*⁴, the relief sought would not be competent and proper as it did not relate directly or indirectly to an issue or *lis* between the parties. Judge J Dlamini therefore declined to make the settlement agreement an order of the court.

CONCLUSION

In *Alana v Monoline Investment 8 Trust 2025 JDR 0369 (GJ)*⁵ Judge J Dlamini confirmed that a court may not regard applications seeking to render a settlement agreement as an order of court as an administrative task and further held that, a court may only make orders which it deems competent and proper, in its discretion.

In this regard, for a settlement agreement to be made an order of court, it must relate to pending litigation between the parties, to comply with legal precedent and be deemed as competent and proper.

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¹(2020/37977) [2025] ZAGPJHC 47 (23 January 2025) para 12.

²2019 (4) SA 541 (GJ) (4 March 2019) para 21.

³(2014/214) [2015]ZACC 30 (29 September 2015) para 22.

⁴(2014/214) [2015]ZACC 30 (29 September 2015) para 22.

⁵(2020/37977) [2025] ZAGPJHC 47 (23 January 2025) para 24.



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