REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 1735/2023

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO
(3) REVISED.
....
.... [redacted]

DATE: **1 November 2024** SIGNATURE.............................

In the matter between:

GEYSER & FERREURA INCORPORATED ATTORNEYS	**APPLICANT**
-and-	
MODIMOLLE-MOOKGOPONG LOCAL MUNICIPALITY	**FIRST RESPONDENT**
MUNICIPAL MANAGER: MODIMOLLE – MOOKGOPONG LOCAL MUNICIPALITY	**SECOND RESPONDENT**
CHIEF FINANCIAL OFFICER: MODIMOLLE – MOOKGOPONG LOCAL MUNICIPALITY	**THIRD RESPONDENT**

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Applicant launched an urgent application against the Respondents for payment in the amounts of respectively R10,614,963.73 (Claim 1) and R9,786,334.73 (Claim 2). The case was enrolled for hearing on the 13th of March 2023 and was subsequently struck from the roll due to lack of urgency.

[2] After laborious negotiations between the parties, Claim 1 was settled in an amount of R8,197,105.75. This Court consequently granted judgment by consent in respect of Claim 1 on the 29th of July 2024.

[3] Judgment in respect of Claim 2 was reserved after extensive argument by both parties. The Applicant's claim against the First Respondent is for outstanding legal fees in respect of services rendered over a substantial period of time. It is common cause between the parties that the First Respondent, duly represented by its erstwhile Acting Municipal Manager, on or about the 28th of October 2021 concluded a written Acknowledgement of Debt for an amount of R16,625,570.02. Only an amount of R6,839,415.29 was paid to date and the balance of R9,786,334.73 therefore remains due and payable in terms of the Acknowledgement of Debt.

[4] Prior to the commencement of arguments, the Respondents applied for a postponement of the matter. The Respondents submitted that they require further time to properly investigate the matter and to obtain copies of the source documents. The postponement was refused, and reasons were presented during the hearing *ex tempore*. The matter was then heard on the merits.

[5] In justification of granting judgment, the Applicant again reiterated that the Acknowledgement of Debt was duly signed by the Acting Municipal Manager and that the First Respondent partially performed in terms thereof. The Acknowledgement of Debt is therefore valid and enforceable.

[6] In opposition to granting judgment, the Respondent submitted that the settlement amount is in excess of R16 million rand. On this basis the source documents must be investigated so as to adhere to the statutory duties of Municipal Entities not to incur unauthorised, irregular or fruitless and wasteful expenditure.

[7] Reference was made to *inter alia* Section 32 of the **Local Government: Municipal Finance Management Act**, Act 53 of 2003 (the 'MFMA') that provides for unauthorised, irregular or fruitless and wasteful expenditure.

<u>Legal framework:</u>

[8] The law regarding Acknowledgements of Debt is trite.

[9] A compromise, or *transactio,* is a settlement by agreement of disputed obligations. The parties thereto agree to regulate their intention in a particular way, each receding from his previous position and conceding something – either diminishing his claim or increasing his liability.[1]

[10] A compromise, like a novation, is a substantive contract which exists independently of the *causa* which gave rise to the compromise, and which can be enforced without the necessity of proving prior cause of action or establishing a legal right pre-existing the compromise. Like any other contract, defences to an action on compromise may be raised. Such defences may, for example, be that the compromise was induced by fraud, or duress, or mutual error, but the defendant is not entitled to raise defences relating to the motives which induced him to agree to the compromise, or the merits of the dispute which was the very purpose of the parties to compromise.[2]

[11] In this Court's view, it is therefore not open to the Respondents to deny liability on the basis that the source documents are not in their possession. The validity of the Acknowledgement of Debt had to be impugned on one of the recognised grounds.[3] This was not done.

[12] As to the allegations contained in the Answering affidavit delivered by the Respondents earlier during the proceedings, it is respectfully submitted that, given the partial performance of the agreement, the Respondents are estopped

[1] See ***Georgia and Another v Standard Bank Chartered Finance Zimbabwe*** 2000 (1) SA 126 (ZS) at 138 I – J
[2] See ***Hamilton v Van Zyl*** 1983 (4) SA 379 (E) at 383H – 384B
[3] See ***SA Express Ltd v Bagport (Pty) Ltd*** 2020 (5) SA 404 (SCA) at [47]

from denying the validity of the agreement on the premise of lack of authority. I say this for two reasons:

12.1 If the provisions of the MFMA applies to the relationship between the Applicant and the Respondent, it will apply to the original appointment of the Applicant as service provider. It is evident that there is no dispute as to the validity of the Applicant's appointment as service provider on the panel of attorneys of the First Respondent.[4]

12.2 In as far as there may be a lack of compliance with internal procedures, the Applicant was entitled to assume that such procedures have been complied with and may thus rely on estoppel.[5]

[13] The Respondents' opposition to granting of judgment in terms of the Acknowledgement of Debt is therefore without merit.

<u>Costs</u>:

[14] There is no reason why the costs should not follow the outcome of the proceedings, and the Applicant is thus entitled to its costs.

[15] The Court is however not convinced that a case has been made out for a punitive cost order. It is not sufficient to merely state that the Applicant should not be out of pocket because the aim of a party and party cost order is to ensure that a

[4] See ***SA Express Ltd v Bagport (Pty) Ltd*** 2020 (5) SA 404 (SCA) at [49]
[5] See ***SA Express Ltd v Bagport (Pty) Ltd*** 2020 (5) SA 404 (SCA) at [52] with reference to ***City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd*** 2008 (3) SA 1 (SCA)

successful party is fully remunerated. This court also takes into consideration that the Applicant effectively represented itself in these proceedings and recoverability of reasonable legal costs and expenses will therefore have to be determined by taxation.

[16] Having regard to the nature of the proceedings, the duration thereof, the extent of the pleadings and the importance to the parties, it will be just if the costs of two counsel are allowed on Scale C.

Order:

[17] **In the result the following order is made:**

17.1 Judgment is granted in favour of the Applicant against the First Respondent for:

17.1.1 Payment in an amount of R9,786,334.73;

17.1.2 Payment of interest on the amount of R9,786,334.73 from 1 January 2023 until 30 April 2023 and at the rate of 11,25% per annum from 1 May 2023 to date of final payment.

17.1.3 Costs including costs in respect of two counsels on Scale C.

[redacted]

M BRESLER
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPLICANT	:	**Adv D van den Bogert SC** **Adv N Sibeko**
INSTRUCTED BY	:	**Geyser & Ferreira Incorporated** ktp6@ktpsa.co.za info@gfattorneys.co.za
FOR THE FIRST, SECOND AND THIRD RESPONDENTS	:	**Adv. G Shakoane SC** **Adv. J Ragau**
INSTRUCTED BY	:	**Malumbete & Makhubele Attorneys** malumbete@telkomsa.net
DATE OF HEARING	:	**29 July 2024**
DATE OF JUDGMENT	:	**1 November 2024**