IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No. 6692/2023

In the matter between:

MAN IN ONE CC **APPLICANT**

and

MATJHABENG LOCAL MUNICIPALITY **RESPONDENT**

JUDGMENT BY: **MHLAMBI, J**

HEARD ON: **18 APRIL 2024**

DELIVERED ON: **05 SEPTEMBER 2024**

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[1] The point for determination in this application is whether the parties, through their attorneys, concluded a compromise or settlement agreement on 24 June or July 2020 for the payment of the amount of R 25 000 000.00 (including) for the provision of security and guarding services to the respondent by the applicant.

[2] The applicant's case is based on a letter dated 24 June 2020 from the respondent's attorneys to the applicant's attorneys and reads as follows:

'Your email dated 26 March 2020 as well as 19 June 2020 refers.
We have consulted with client and we are of the view point that the amount outstanding is exuberant and is client not prepared to settle for the outstanding amount of R 37 183 471.00.

We have been instructed to settle the amount of R 25 000 000.00 which amount to be paid in equal instalments as from January 2021 in order for client to finalise the outstanding court orders in terms of case number 1430/2018 and case 1239/2018, High Court Bloemfontein. These amounts to be paid over a 24 months' period in order to finalise the matter.

Should your client not be willing to settle the amount we then suggest that the matter should take its legal course and you are then requested to ensure that all court papers be served upon Bokwa Inc, 1 Cypress Crescent, Jim Fourche Park. Welkom.

We trust that you will find the above mentioned in order.
Yours faithfully'[1]

[3] In 2009, the parties concluded a contract in which the applicant provided security and guarding services to the respondent for three years. On expiry of the term, the respondent appointed the applicant on a month-to-month basis. Various disputes arose between the parties in 2017/2018 about the month-to-month appointment, which led to the court granting a declaratory order against the respondent for its indebtedness to the applicant for R 15 228 477.18. A further judgment was obtained under case number 1239/2018 for the payment of services rendered. It would appear that the respondent made undertakings to liquidate the debts by way of structured payments but failed to honor them. The respondent also failed to pay for the security and guarding services

[1] Annexure FA 7, page 70 of the Index.

rendered from 1 August 2018 until 31 July 2019.[2]

[4] After a meeting that was held on 30 January 2020, where various matters were discussed, the respondent denied the liability to pay for the security and guarding services rendered during the period 1 August 2018 until 31 July 2019, contending that it had suffered damages because of certain alleged non-compliance by the applicant.[3]

[5] On 5 March 2020, the respondent, through its attorneys, addressed a letter to the applicant, attaching a copy of the damages and losses it suffered, which were supposed to be covered by the applicant's insurance as determined by the appointment contract. The letter invited the applicant's attorneys to meet with the respondent's attorneys to finalize a draft settlement for the clients to verify, confirm, and conclude in writing.[4] On 26 March 2020, the applicant's attorney addressed a letter to the respondent's attorney stating that the applicant would be prepared to accept R37 183 471.00 for the month-to-month contract from 1 August 2018 to 31 July 2019.[5] This elicited the response in the letter dated 20 June 2020 listed above.

[6] The applicant stated in the founding affidavit that it was prepared to accept the offer, and its attorney advised the respondent's attorney, Mr. Maritz, by telephone of its acceptance on/or about June or July 2020. However, the applicant's attorney inadvertently omitted to confirm its acceptance in writing.[6] From that time until 2023, when Mr. Maritz's mandate was terminated, the attorneys had various telephone conversations relating to the respondent's commencement with the payment of the R25 000 000.00. In this period, arrangements and rearrangements for the payment were orally agreed upon between the attorneys.

[2] Para 16 of the Founding Affidavit.
[3] Para 19 of the Founding Affidavit.
[4] Page 28 of the Index.
[5] Para 20 of the Founding Affidavit.
[6] Para 22 of the Founding Affidavit.

[7] In December 2022, the applicant's attorney accepted the respondent's offer which was made over the telephone by its attorney to liquidate the R 25 000 000.00 in monthly instalments of R 500 000.00 each from the end of January 2023, with an enhanced payment of R 1 500 000.00 in March, August, and December of each year. On 2 March 2023, the applicant's attorney forwarded an acknowledgment of debt to the respondent's attorney for signature. According to the applicant, the acknowledgment of debt encapsulated the terms agreed upon with the respondent's attorney.[7]

[8] On 31 October 2023, the applicant's attorney forwarded a letter to the respondent's municipal manager about the background and the extensions granted for the debt payment. It was also stated that should the letter's contents not be disputed, the respondent would be regarded as having acknowledged them. There was no response from the respondent.[8]

[9] The applicant's and respondent's attorneys had various subsequent telephone discussions. At the beginning of 2021, the respondent's attorney informed the applicant's attorney that the respondent would only commence with the repayment of the settlement amount of R 25 000 000.00 from the end of June 2022. In June 2022, it was agreed by both the parties' attorneys that the payment arrangement should stay over until December 2022.[9] The respondent found it strange that the applicant failed to explain why the parties did not sign the settlement in June 2020 when it was made.[10]

[10] The respondent contended that the applicant's case was based on the three letters between the parties dated 5 March 2020, 26 March 2020, and 24 June 2020.[11] According to the respondent, its attorney clearly stated that any agreement between the parties would be subject to the respondent's approval and reduced to writing.[12] The negotiations were subject to verification,

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[7] Para 24 of the Founding Affidavit.
[8] Para 27 of the Founding Affidavit.
[9] Para 22.2 of the Founding Affidavit.
[10] Para 11 of the Answering Affidavit.
[11] Para 1.3 of the respondent's heads of argument.
[12] Para 1.4 of the respondent's heads of argument.

confirmation, and signing or approval by the respondent for a legally binding compromise agreement to exist. The applicant had the same understanding, it was contended. Hence, the applicant's attempts to send correspondence and the concept acknowledgment of debt to Bokwa Attorneys on 2 March 2023 requiring the respondent's signature. In the letter of 24 June 2020, a caveat was added that should the matter not be settled, it should take its ordinary course of litigation. The applicant failed to respond to this letter.

[11] On the evaluation of the evidence, it is common cause that from 24 June 2020 until 2 March 2023, a period of about two years and nine months, there was no written communication or correspondence between the attorneys about the payment of the R25 000 000.00. The crucial question is whether a compromise was reached between the parties. In my view, it was not. In its supplementary heads of argument, the applicant argued that the respondent's erstwhile attorneys or Bokwa attorneys, had ostensible authority to act on behalf of the respondents. This is not an issue. The issue is whether a consensus was reached for R25 000 000.00 to be paid to the applicant by the respondent.

[12] It is clear from the letter of 24 June 2020 that Bokwa Attorneys had the mandate at the time to settle the matter between the parties. It also indicated the route to be followed should settlement not be reached. It was not responded to. If the applicant alleges that it reacted to the offer orally through its attorney, surely, taken into account the parties' tumultuous history and court battles, it would have been prudent to cemented this relationship in one way or the other. Despite the inadvertent omission, nothing was done for years to have a record of the relationship for posterity.

[13] A compromise, as an agreement to resolve a disagreement, must comply with the contractual principles of offer and acceptance. In Be Bop a Lula Manufacturing & Printing CC v Kingtex Market Marketing (Pty) Ltd,[13] it was said that: "*The essential issue is whether an agreement of compromise was concluded: one is concerned simply with the principles of offer and acceptance.*

[13] 2008 (3) SA 327.

The first question is whether the cheque accompanied by B the Credit Request and Final Reconciliation constituted an offer of compromise. In other words, 'the proposal, objectively construed, must be intended to create binding legal relations and must have so appeared to the offeree'.

[14] The court went on to say that although, generally, a contract is founded on consensus, contractual liability can also be incurred in circumstances where there is no real agreement between the parties. Still, one of them is reasonably entitled to assume from the words or conduct of the other that they were in agreement. *Reid Bros (SA) Ltd v Fischer Bearings CO Ltd* observed that acceptance of an offer should manifest by some unequivocal act from which the inference of acceptance can logically be drawn.

[15] It is unclear why the applicant conceded an inadvertent omission when it referred to the failure to respond in writing to the respondent's offer. Was it a suggestion that it ought to have done so but failed? The applicant relies on telephone conversations to prove the acceptance of the offer. It is trite that the person alleging the compromise bears the onus of establishing it. Save for the omission of accepting the offer in writing, the applicant failed to confirm the oral acceptance in writing subsequently. So also, the applicant failed to confirm in writing subsequent alleged arrangements and re-arrangements between the parties surrounding the payment of the R25 000 000.00. No crucial witness testimony was presented to bolster the applicant's case on the part of the oral arrangements.

[16] It took the applicant a long time to insist on a signed acknowledgment of debt from the respondent. The significant delay in the follow-up and the failure of the applicant to confirm the transactions in writing between the parties for years do not strengthen the applicant's case. The telephone conversations, on their own, are not sufficient to prove that a legally binding compromise was concluded. The applicant, as the party claiming the existence of the compromise, bears the onus of proof.

[17] Considering the facts, it is clear that the applicant should have foreseen that a dispute of fact would arise and that motion proceedings were not the appropriate steed to saddle. I find that no compromise was concluded between the parties due to the applicant's failure to communicate its acceptance to the respondent. The application must, therefore, fail.

[18] It is trite that the costs should follow the event.

[19] The following order issues:

ORDER:

1. The application is dismissed with costs.

[redacted]

JJ MHLAMBI, J

APPEARANCES:

On behalf of the Applicant	Adv M.C. Louw
Instructed by:	Hill, McHardy & Herbst Attorneys
	BLOEMFONTEIN
On behalf of the Respondent	Mr. Dumisani S Qwelane
Instructed by:	Qwelane Theron & Van Niekerk Inc
	BLOEMFONTEIN