

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 2024-029976

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

27 JUNE 2025

Judge Dippenaar

In the matter between:

STANDARD BANK OF SOUTH AFRICA LTD

APPLICANT

and

RETHABILE MATLALENG RAMODIBEDI

FIRST RESPONDENT

NAPO EDWARD RAMODIBEDI

SECOND RESPONDENT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it onto the electronic platform. The date and time for hand-down is deemed to be 10h00 on the 27th of JUNE 2025.

DIPPENAAR J:

[1] This is an opposed motion in which the applicant sought a monetary judgment or specific performance of a settlement agreement concluded with the respondents on 31 October 2022.

[2] The applicant contended that it was entitled to such relief based on common cause facts. Those facts were the following. The first respondent and Mr Peter Dikhuba executed written guarantees in favour of the applicant as security for the indebtedness of Mendi Trading and Investments (Pty) Ltd to the applicant. Mendi Trading defaulted on its payment obligations to the applicant and the full outstanding amount of some R4 million became due and payable to the applicant. The respondents entered into a settlement agreement with the applicant for payment of the outstanding amount due by Mendi Trading. A portion of the funds were paid by the respondents. The respondents refuse to settle the outstanding full balance.

[3] The respondents raised two defences. The first, that the relief sought by the applicant amounts to 'double dipping' because the applicant already has a judgment against Mr Dikhuba for the same debt being claimed against them. It was submitted that if judgment were granted against the respondents, this would entitle the applicant to two amounts of the same debt unless it abandoned the Dikhuba judgment or consented to Mr

Dikhuba's rescission of that judgment. The second, raised in the alternative if the first defence failed, that the settlement agreement lacks fairness and is contrary to public policy.

[4] The notion that the judgment against Mr Dikhuba releases the respondents from their obligations under the guarantee or the settlement agreement, is misguided. It is trite that a guarantee is an independent, original and unqualified undertaking by the guarantor to pay money to the creditor on a certain date or the happening of a certain event. It is not an accessory or ancillary contract, not an undertaking that the principal debtor will perform its obligations. ¹A guarantor's obligation under a guarantee is independent of the principal debtor's obligation and it indemnifies the creditor from any losses, while a surety is only liable for losses resulting from the principal debtor's breach of a valid contract. Useful guidance is found in case law applicable to suretyships.²

[5] In terms of the present guarantee, the applicant contracted with each of the sureties independently and separately, as was done in the case of the suretyships in *Absa Investments (Pty) Ltd v Smit*.³ It was held:

'The applicant thus has the right to select which of the guarantors he will, in the first instance single out to pay the secured debt. By doing this he has not released any of the other sureties. If the selected surety does not pay in full or sufficiently expeditiously, the creditor can select one of the remaining sureties. So in turn he can collect from all and they are only released from their obligation to the creditor after the secured debt is paid in full. It is only when this has happened that sureties can settle accounts among themselves....the creditor is not subject to any of the equities and his chances to collect from any of the remaining sureties

¹ *List v Jungers* 1979(3) SA 106 (A) at 119E-G.

² *Sapirstein and Others v Anglo African Shipping Co (SA) Ltd* 1978 (4) SA 1 (A) at 11G-H.

³ *Absa Investments (Pty) Ltd v Smit* 1980 (1) SA 897 (C) at 902B-E.

should not be prejudiced by the sureties litigating amongst themselves before he has had the secured debt paid in full’.

[6] It was an express term of the guarantee (clauses 1.1.1 and 1.1.1.1) that the first respondent (who signed the guarantee with the written consent of the second respondent) and Mr Dikhuba jointly and severally guaranteed and undertook as principal and independent obligations to the applicant the due, punctual and full payment of all the debts of Mendi Trading.

[7] The judgment against Mr Dikhuba has no bearing on the several obligations of the respondents in circumstances where there has been no payment in terms of such judgment. It was not contended that Mr Dikhuba has paid. To the contrary, the facts reveal that he is seeking to rescind the judgment granted against him.

[8] The settlement agreement did not novate the obligations of the respondents under the guarantee. The respondents acknowledged this in clause 10.1. Their liability was joint and several with that of Mr Dikhuba. In terms of clause 1.1.7 read with clause 3, the respondents admitted their liability to the applicant, together with interest and costs. Under clause 2.4, the respondents admitted that they are jointly and severally liable with each other, the principal debtor, Mendi Trading and any other guarantor, being Mr Dikhuba, for the underlying debt (being that of Mendi Trading). In terms of clauses 2.8 and 2.9, the settlement agreement was an indulgence granted to the respondents and the applicant would have been entitled to proceed with legal action to seek payment.

[9] The alleged defence of double dipping does not avail the respondents. Neither does their reliance on *Standard Bank v the Master of the High Court*, where the facts are entirely distinguishable from the present.⁴ In the present instance, the issue of double

⁴ *Standard Bank v the Master of the High Court Bloemfontein and Others* [2024] ZAFSHC 164 (22 May 2024).

payment does not arise. Any judgment against the respondents would be joint and several with the judgment obtained by the applicant against Mr Dikhuba. I conclude that the defence lacks merit and falls to be rejected. The fact that the judgment is joint and several with the judgment against Mr Dikhuba will be expressly stated in the order.

[10] I turn to the respondent's alternative defence that the settlement agreement lacks fairness and is contrary to public policy.

[11] The respondents did not in their answering papers make out a proper basis for such defence. It was contended that the applicant claiming the same debt from different people, where the first respondent has satisfied 'her portion' lacks fairness and is contrary to public policy. The defence was thus squarely predicated on the respondents' interpretation of the settlement agreement. That interpretation lacks merit and is not supported by the text, context or purpose of the agreement.

[12] Neither the guarantee nor the settlement agreement referred to any 'portions' and no apportionment between the respective guarantees was agreed on. The agreements expressly refer to liability being joint and several. The respondent's arbitrary selection of what a proper apportionment should be does not pass muster. It is an issue between them and Mr Dikhuba to resolve once the full outstanding debt is paid.

[13] The suggestion that to the extent that the applicant has not fully exhausted its remedies against Mr Dikhuba, the enforcement of the settlement agreement is unfair, also does not pass muster, given the express terms of the agreements and the relevant legal principles already referred to.

[14] The Constitutional Court in *Beadica 231 CC and Others v Trustees, Oregon Trust and Others*⁵ made it clear that *pacta sunt servanda* remains an important principle in our law. The selective quotations therein relied on by the respondents do not assist their case.

[15] In *Beadica*, with reference to its earlier judgment in *Barkhuizen v Napier*,⁶ the Constitutional Court confirmed the recognition that public policy in general requires parties to honour contractual obligations that have been freely and voluntarily undertaken. This is because the principle of *pacta sunt servanda* is ‘a profoundly moral principle, on which the coherence of any society relies’.

[16] It is not necessary to repeat all the relevant principles enunciated in *Beadica*. In the present instance, apart from alleging a different shareholding in Mendi Trading and the existence of a judgment against Mr Dikhuba, the respondents have fallen far short of discharging their onus of illustrating why the terms of the settlement agreement or the guarantee or its enforcement would be unfair or unreasonable in the given circumstances. The respondents have further failed to explain their breach of the settlement agreement.

[17] If any disputes arise between the respondents and Mr Dikhuba, they are to be resolved between those parties in due course. They do not involve the applicant and do not constitute a barrier to the applicant’s entitlement to relief.

[18] The respondent submitted that the enforcement of the settlement agreement would, to the extent that the applicant has not fully exhausted its remedies against Mr Dikhuba, be unfair, unreasonable and unduly harsh. In applying the two staged enquiry, the respondents fail on each score. In considering the agreement and whether it is so unreasonable on its face, as to be contrary to public policy, it cannot be concluded that the respondent has established their case. The settlement agreement is reasonable. In

⁵ *Beadica 231 CC and Others v Trustees, Oregon Trust and Others* 2020 (5) SA 247 (CC) paras 35-37.

⁶ *Barkhuizen v Napier* 2007 (5) SA 323 (CC).

considering whether, in all the circumstance of the particular case, it would be contrary to public policy to enforce the settlement agreement, the respondents similarly fail. They have, simply put, failed to discharge their onus to demonstrate why its enforcement would be unfair and unreasonable in the given circumstance. The respondents have similarly failed to set out any cogent reasons for their non-compliance with the settlement agreement.

[19] Given the present facts, public policy and the principle of *pacta sunt servanda* dictates that the settlement agreement and the guarantee must be honoured.

[20] The respondents alleged that they concluded the settlement agreement 'on the basis and understanding' that the applicant would only proceed against them after exhausting its remedies against Mr Dikhuba. No factual basis was however pleaded for these allegations. At best they amount to an allegation of unilateral mistake or error and no basis was pleaded entitling the respondents to resile from the agreement on the narrow basis available at law.⁷ It is accordingly not necessary to entertain the issue further. The allegation is further directly contradictory to the wording of both the guarantee and the settlement agreement, which militates against its veracity and cogency.

[21] I conclude that the applicant has made out a proper case for relief and that the respondents have not established any valid defence. It follows that the applicant is entitled to judgment as sought.

[22] There is no reason to deviate from the normal principle that costs follow the result. In terms of the agreements, the respondents are liable for costs on the scale as between attorney and client.

⁷ In compliance with the requirements set out in *National and Overseas Distributors Corporation (Pty) Ltd v Potato Board* 1958 (2) SA 473 (A) at 479G-H

[23] In the result, the following order is granted:

[24] Judgment is granted against the first and second respondents, jointly and severally, the one paying the other to be absolved for:

[1] Payment of the amount of R704 095.48;

[2] Interest in the amount in [1] above at the rate of 9.25% per annum from the commencement date along with additional penalty interest of 4.00% per annum from the maturity date (14 March 2022), both calculated daily in arrears.

[3] The costs as agreed in terms of clause 9.1.1 of the settlement agreement, in the amount of R6 900.00

[4] The applicant's costs of suit on the scale as between attorney and own client

[5] This judgment will be joint and several with any judgment granted in favour of the applicant against Mr P Dikhuba arising out of the guarantees here in issue.



EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARING

DATE OF HEARING : 22 and 24 APRIL 2025

DATE OF JUDGMENT : 27 JUNE 2025

APPEARANCES

APPLICANT'S COUNSEL : Adv. E. Furstenburg

APPLICANT'S ATTORNEYS : Claassen Inc.

RESPONDENT'S COUNSEL : Adv. M Yonela

RESPONDENT'S ATTORNEYS : Mvana & Associates