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REPUBLIC OF SOUTH AFRICA



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

CASE NO.: 10528/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 16 July 2025

Signature: E van der Schyff

In the matter between:

**O[...] M[...] L[...]
(ID 7[...])**

PLAINTIFF

and

**S[...] S[...] L[...]
(ID 7[...])**

DEFENDANT

JUDGMENT

Van der Schyff J

The factual context

- [1] Mrs. O[...] L[...] (Mrs. O) and Mr. S[...] L[...] (Mr. S) were married in community of property on 26 July 2006. Their union was blessed with two children, both of whom are still minors. Unfortunately, the marriage broke down irretrievably. Mrs. O issued a summons for divorce. She claims in the particulars of claim that the parties reached a settlement. She attached a settlement agreement signed by her and two witnesses to the summons. This agreement deals with the issue of the parties' respective parental rights and responsibilities, care and contact (*sic*), child maintenance, and the proprietary aspects arising out of the marriage and the termination thereof.
- [2] The settlement agreement attached to the particulars of claim is dated 21 February 2022. The particulars of claim was dated on the same date. The summons was served on Mr. S. personally on 15 March 2022. Mr. S subsequently signed the settlement agreement on 25 March 2022, together with two witnesses, and couriered it to Mrs. O. He again signed the settlement agreement on 11 April 2022 at a meeting with Mrs. O and her legal representative. I pause to note that neither Mrs. O nor Mr. S explained during the trial why he signed the same settlement agreement twice.
- [3] Some time passed, and Mr. S apparently had a change of heart. On 15 July 2022, he filed a notice of intention to defend the divorce action. After a notice of bar was served on Mr. S's legal representative, a plea was eventually filed in November 2022.
- [4] In the plea, Mr. S admits that the marriage has irretrievably broken down. He denies, however, that a settlement agreement was concluded between the parties and avers that when he signed the agreement, he believed he had signed an acknowledgement of receipt of the divorce summons. Mr. S seeks a decree of

divorce, the division of the joint estate, and the referral of the maintenance of the minor children to the maintenance court.

- [5] Mrs. O filed a plea in reconvention. She disputes Mr. S's claim that no agreement was concluded between the parties, stating that Mr. S had signed the return of service and handed it back to the Sheriff, while couriering the signed settlement agreement to her.

Proceedings in court

- [6] When the trial commenced, Mrs. O's legal representative submitted that the issue was crisp. The parties have concluded a settlement agreement in anticipation of finalising their divorce, and the court should enforce it.
- [7] Mrs. O provided the evidence necessary to sustain a decree of divorce. She also confirmed the signatures on both copies of the settlement agreement as those of herself and Mr. S. She testified that the settlement agreement reflects that the parties agreed that they would both retain parental rights and responsibilities regarding the minor children, that the children's primary residence would be with her, that Mr. S. would pay child maintenance in the amount of R4000.00 per month per child and that she would not receive any spousal maintenance. Mrs. O testified that the parties agreed that full ownership of the parties' immovable property would be transferred to her. She testified that Mr. S not only signed the settlement agreement that he couriered to her, but he also signed a copy of the agreement again after the parties met at her counsel's office on a later date.¹
- [8] Mrs. O was not vigorously cross-examined. She was asked why the particulars of claim and the settlement agreement signed by her reflect the same date. She answered that she signed one document. Thereafter, Mr. S's version was put to her. It was put to her that Mr. S. would testify that he did not understand that what he signed was a settlement agreement, as he is not trained or educated in the law. Mr. S would also testify that there was no discussion with him regarding forfeiting

¹ Adv. Lynn Human initially represented the plaintiff.

his interest in the parties' immovable property. Mrs. O answered – 'I know there was a discussion before I sued for divorce.' The plaintiff's case was closed after a short re-examination.

- [9] Mr. S testified on his own behalf. He testified that he was emotionally affected by the divorce proceedings. He thought he was acknowledging receipt of the summons when he signed the settlement agreement. He later attended a meeting with Mrs. O's legal representative and signed another copy of the same agreement. He said he was told during this meeting what he had to agree to, and therefore signed the agreement. He later decided he was not in agreement with what he was told to sign and obtained legal representation. He denied that there was any discussion regarding a settlement.
- [10] During cross-examination, Mr. S's attention was drawn to the fact that he not only signed the settlement agreement on 25 March 2022, but that two witnesses co-signed it, and that he also added his email address and cell number to the document. On 11 April 2022, another copy of the settlement agreement was signed by him, and two witnesses again co-signed it. Whilst Mr. S claimed that he initially signed the settlement agreement because he thought he was merely acknowledging receipt of the summons, he conceded that he signed the agreement a second time.
- [11] My impression of Mr. S as a witness is not favorable. His answers were vague and elusive. When asked by Mr. O's counsel regarding his employment, he attempted to avoid the question and said he does not think the information is relevant for the proceedings. He answered, when prompted by the court, that he is a consulting engineer. He was vague when asked to explain why he signed the agreement a second time. In answer to a question by the court, Mr. S stated that he was called to a meeting with Mrs. O and her legal representative, discussions ensued, and he was given a document to sign. Mrs. O was legally represented, but he was not. Mr. S's case was closed.

- [12] Both counsel made oral submissions after evidence was led. Mrs. O's counsel submitted that the matter was settled. He submitted that the court must apply the principle of '*caveat subscriptor*'. He emphasised that Mr. S is not an ignorant or uneducated person. He signed the agreement twice in the presence of witnesses and was aware of its consequences. He should be held bound to the agreement.
- [13] Mr. S's counsel submitted that Mrs. O did not lead any evidence as to where and when the parties engaged in negotiations before the divorce summons was issued. He again reiterated that Mr. S. signed the agreement the first time because he thought he was acknowledging receipt of the summons. He was unaware of the implications of what he had signed. Counsel referred the court's attention to clause 6.1.2 of the settlement agreement and submitted that Mrs. O attempted to sneak the forfeiture of Mr. S's interest in the parties' immovable property in through the back door. He emphasised that no agreement was reached regarding the immovable property.

Discussion

- [14] After considering the evidence presented and the submissions made, and on the basis set out below, I am of the view that clause 6.1.2 of the alleged settlement agreement lies at the root of the litigation and caused Mr. S to defend the divorce action. Mr. S is not opposing the granting of a decree of divorce. He essentially wants to escape the patrimonial consequences of the averred settlement agreement as he sees it. The only defense pleaded by Mr. S is that he denies having concluded a settlement agreement with Mrs. O. He denied the existence of an agreement on the basis that he signed the document embodying the agreement because he was under the impression that he was acknowledging receipt of the summons.
- [15] Divorce litigation is *sui generis*. A court order is required to dissolve a marriage, irrespective of whether the divorce is uncontested. Section 7 of the Divorce Act 20 of 1979 specifically provides that a court granting a decree of divorce may make an

order regarding the division of assets or the payment of maintenance in accordance with a written agreement concluded between the parties.

[16] Parties often discuss and agree on the patrimonial effects of their looming divorce before the actual divorce proceedings are instituted. The written agreement containing the terms on which a matter is settled is drafted and signed, often before the summons is issued. Because of the *sui generis* nature of divorce proceedings and the fact that a court order is required to dissolve a marriage, it can, in my view, not be said that parties have contracted 'outside the context of litigation'² when a written agreement is concluded before the institution of divorce proceedings, even less, in circumstances like the current one, where discussions between the parties before the institution of a divorce are captured in a written agreement signed by one party at the institution of the proceedings and co-signed by the other after the summons initiating the proceedings is served.³

[17] The context within which a finding must be made as to whether the parties reached an agreement settling at least some of the consequences of their looming divorce is the following –

- i. Mrs. O avers the parties settled the issues arising from their divorce and attaches a settlement agreement signed by her to the particulars of claim;
- ii. About ten days after being served with the summons, Mr. S signs the settlement agreement and returns it to Mrs. O per courier;
- iii. At a subsequent meeting, Mr. S again signs the settlement agreement after discussions were held;
- iv. During cross-examination, it was pertinently put to Mrs. O that Mr. S will testify that there was no discussion regarding him forfeiting his interest in the immovable property. It is very relevant that this is the sole aspect of the agreement that arose during Mrs. O's cross-examination.

² See *Eke v Parsons* 2016 (3) SA 37 (CC) at 49A.

³ Marriage is not an ordinary contract. It cannot be terminated by the mere consent of the parties. See *Carter v Carter* 1953 (1) SA 202 (A) at 205.

- v. In answer to a question raised by the court, Mr. S said there were discussions regarding the 'split' but 'nothing concrete', 'no specifics' were agreed on.

- [18] The fact that Mr. S signed the agreement a second time in April 2022, after having had discussions with Mrs. O and her legal representative renders the question as to whether he signed the agreement in March 2022 because he was of the view that he acknowledged receipt of the summons, moot, except as far as it relates to his credibility as a witness.
- [19] It remains relevant to state, however, that Mr. S's explanation that he thought he was acknowledging receipt of the summons when he signed and returned the hard copy settlement agreement does not hold water. He might not be educated in the law, but he is, by his own admission, not an ignorant, unschooled person. He is a consulting engineer, a fact he only disclosed after being prompted by the court. The document he signed with two witnesses is clearly titled 'Settlement Agreement.' The preamble to the agreement is clear and unambiguous. It expresses the desire of two parties who acknowledge that their marriage has irretrievably broken down, to settle the matter in the terms contained in the agreement.
- [20] Mr. S did not merely sign the document and hand it back to the Sheriff of the court; he took his time, had the document co-signed by witnesses, and then returned it to Mrs. O. This conduct is not indicative of an intention to defend a divorce action but leads to the only logical inference that the parties settled the issues between them on the terms contained in the agreement.
- [21] To make matters worse for Mr. S, he signed this agreement for a second time. His evidence was that he met with Mrs. O's legal representative, discussions ensued, and he again signed the document. His testimony that he signed the document a second time because he was told to do so is insufficient for this court to find that he was unduly influenced or coerced into signing the agreement or that it was induced

by fraud. It was not pleaded, and he did not elaborate on the statement when testifying.

- [22] The court was presented with a signed settlement agreement. When a document is put in evidence and the defendant's signature is admitted, the onus resting on the plaintiff is discharged unless the evidence also discloses some fact which, in law, entitles the defendant to repudiate the document.⁴ Also relevant is *Burger v Central South African Railways*,⁵ where it was held that it is a sound principle of law that a person, when they sign a contract, is taken to be bound by the ordinary meaning and effect of the words that appear above their signature.
- [23] If the circumstances under which Mr. S. signed the agreement are considered, neither fraud, nor misrepresentation, nor undue duress was pleaded or has been shown to exist. Mr. S is an educated person. No evidence indicates that he was misled. The language of the agreement is straightforward and non-technical. The evidence does not indicate that any undue pressure was exerted to force him to sign.
- [24] In *University of Johannesburg v Auckland Park Theological Seminary and Another*,⁶ the Constitutional Court considered the interplay between the interpretative injunction on courts to interpret contracts within their contexts, having regard to relevant contextual evidence and the accepted legal principles that form part of the parole evidence rule.⁷ In dealing with the interpretation of the contract before it, the Constitutional Court endorsed the approach laid down in the often quoted *Natal Joint Municipal Pension Fund v Endumeni Municipality*,⁸ and confirmed that it is now settled law that the approach to interpretation requires the court, from the outset, to consider text, context, and purpose together, with neither predominating over the other.⁹

⁴ *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A) at 470A.

⁵ 1903 T.S. 571 at 578.

⁶ 2021 (6) SA 1 (CC) hereafter referred to as *Auckland Park*.

⁷ *Auckland Park* supra at para [2].

⁸ 2012 (4) SA 593 (SCA) at par [18].

⁹ *Auckland Park* supra at para [65].

[25] The factual context within which the written agreement between Mrs. O and Mr. S was concluded is that they were facing an imminent divorce. The document clearly reflects that it is a settlement agreement. In the preamble to the agreement, it is stated that:

- i. It is common cause that the marriage has irretrievably broken down;
- ii. The parties are desirous of settling the patrimonial aspects of their marriage relationship, which has irretrievably broken down on certain terms and conditions as set out in the agreement;
- iii. The parties have reached an agreement about the parental rights and responsibilities, contact, and maintenance [as far as their minor children are concerned].

[26] The agreement reflects the phrases 'both parties agree' or 'the parties agree that' in relation to the following issues:

- i. That a decree of divorce be granted;
- ii. That both parties shall have full parental rights and responsibilities with regard to the minor children;
- iii. Mrs. O's right to provide for the minor children's primary residence and care;
- iv. Mr. S's right of contact with the children;
- v. Mr. O's duty to pay the children's monthly medical aid contributions, and her responsibility to provide for their stationery, school uniforms, clothing, transport, and allowances;
- vi. Mr. S's responsibility to pay the school-, tertiary, and post-graduate study fees and extramural activities, and a maintenance contribution of R4000.00 per month per child, which amount shall escalate by 6% per year on the 'anniversary of the court order';
- vii. The maintenance court may be approached for a variation of the maintenance payable by the parties;
- viii. The parties agree that any debts that either party has incurred shall retain (sic.) [remain] the debt of such party and the parties 'irrevocably indemnify each other from liability for debts incurred by the other party, except for the

Tshwane Municipality arrears account of plus minus R425 000.00 of which Mr. S previously agreed to pay and in relation of which Mrs. O has been paying an amount of R7 500.00 per month.

[27] The language used and the contextual setting within which this document is to be interpreted support a finding that the above-mentioned aspects were definitively settled between the parties. Other aspects that were clearly settled if the agreement is read in context include:

- i. The issue of spousal maintenance - Mrs. O abandons her claim for maintenance against Mr. S;
- ii. The division of movable property.

[28] This brings us to clause 6 of the agreement, and for clarity's sake, the section is quoted below:

‘6. PROPRIETARY ASPECTS

6.1 IMMOVABLE PROPERTY

PROPERTY: STAND 2[...] SITUATED AT [...] A[...] CRESCENT, I[...] V[...] ESTATE, HIGHVELD, CENTURION, 0157

6.1.1 It is recorded that the parties are the joint owners of the above property, and the Plaintiff is responsible for paying the mortgage bond payments and interest thereon.

6.1.2 The Plaintiff seeks that the Defendant will forfeit his share of patrimonial benefit on the grounds that the Defendant will unduly benefit from the Community of Property Regime, as the Plaintiff has been solely responsible for the bond repayments.

6.1.3 Further that the Property will be transferred into the name of the Plaintiff once the Decree of Divorce is granted.’

[29] Counsel for Mr. S. argued that the wording of clause 6 reflects that the issue was not settled. After carefully considering the pleadings, the evidence, and the legal principles referred to above, I disagree. I interpret clause 6 in its totality, and in its

contextual setting as captured in a settlement agreement that Mrs. O sought for purposes of settlement that Mr. S forfeit his interest in the immovable property. By signing the agreement, he acceded to the request.

[30] It is again apt to refer to *George v Fairmead (Pty) Ltd, supra*, where the appeal court confirmed:

‘When a man is asked to put his signature to a document, he cannot fail to realise that he is called upon to signify, by doing so, his assent to whatever words appear above his signature. In cases of the type of which the three I have mentioned are examples, the party who seeks relief must convince the Court that he was misled as to the purport of the words to which he was thus signifying his assent. That must, in each case, be a question of fact, to be decided on all the evidence led in that particular case.’¹⁰

[31] Mrs. O successfully proved the existence of a written settlement agreement between the parties. The fundamental general principle that applies where written agreements are concluded between parties is *pacta sunt servanda*. A principle that withstood constitutional muster, albeit that the Constitutional Court confirmed that the principle is subject to constitutional control.¹¹ Mr. S did not make out a case that the agreement in question embodies contractual terms that are in conflict with constitutional values or that he was ‘misled as to the purport of the words to which he was thus signifying his assent’.

[32] The issue of costs was not raised by any of the parties, and neither was it sought in the pleadings.

ORDER

In the result, the following order is granted:

¹⁰ At 472A-B.

¹¹ *Barkhuizen v Napier* 2007 (5) SA 323 (CC)

1. A decree of divorce is granted, incorporating the settlement agreement marked 'X' signed by the parties.

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the plaintiff: Adv. H.C. Du Plessis
Instructed by: Shapiro & Ledwaba Attorneys

For the defendant: Mr. T.K. Noyane
Instructed by: Noyane Inc

Date of the hearing: 9 June 2025
Date of judgment: 16 July 2025