

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2022-046095

DATE: 5 August 2025

In the matter between:

MEDTRONIC (AFRICA) (PTY) LIMITED

Applicant

and

CAPITAL ENDOVASCULAR (PTY) LIMITED

First Respondent

**AFRICAN HEALTHCARE INVESTMENT
SOLUTIONS (PTY) LIMITED**

(formerly **MANIPAL AFRICA (PTY) LIMITED**)

Fifth Respondent

Neutral Citation: *Medtronic (Africa) v Capital Endovascular and Another*
(2022-046095) [2025] ZAGPJHC --- (5 August 2025)

Coram: Adams J

Heard: 22 April 2025

Delivered: 5 August 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 5 August 2025.

Summary: Arbitration – Arbitration Act 42 of 1965 – award, making settlement agreement an Award of the Arbitrator in terms of Arbitration Foundation of SA's rules – application to have award made an order of court granted in terms of s 31(1) of the Arbitration Act – application for specific performance in terms of settlement agreement – respondent disputing the terms of settlement agreement – interpretation of contract – purposive, textual and contextual interpretation to be applied.

Counterapplication to have the settlement agreement rectified – respondent alleges that the intention of the parties was to agree on a particular amount – dispute decided in favour of the applicant on the basis of the principles relating to the interpretation of contracts –

Application granted and counterapplication dismissed.

ORDER

- (1) The Arbitration Award dated 11 July 2022 by the Arbitrator, Mr Christopher Loxton SC, and handed down / published by him on the same date, being 11 July 2022, be and is hereby made an Order of this Court.
- (2) The first respondent is ordered to comply with the settlement agreement concluded between it and the applicant on 29 June 2022, read with addendum 1 thereto dated 11 July 2022 ('the settlement agreement').
- (3) The first respondent shall pay to the applicant the capital amount of R21 million, together with interest on the said sum of R21 million at the prescribed legal rate of interest of 8.25% per annum, calculated from 22 July 2022 to date of final payment.
- (4) The first respondent shall pay the applicant's costs of this opposed application, including the costs of two Counsel, one being Senior Counsel (where so employed), on scale 'C' of the applicable tariff provided for in the Uniform Rules of Court.
- (5) The first respondent's counterapplication for rectification of the settlement agreement be and is hereby dismissed with costs.
- (6) The first respondent shall pay the applicant's costs of the opposed counterapplication, such costs to include the costs consequent upon the utilisation of two Counsel, one being Senior Counsel (where so employed), on scale 'C' of the applicable tariff provided for in the Uniform Rules of Court.
- (7) It be and is hereby declared that the second respondent has indemnified the first respondent for any and all claims made by the applicant against the first respondent under the settlement agreement concluded between the parties on 29 June and 11 July 2022 ('the settlement agreement').

- (8) The second respondent is liable to the first respondents for any and all amounts which the first respondent is ordered to pay to the applicant by this Court under the case number 2022-046095.

JUDGMENT

Adams J:

[1]. On 21 January 2016, the applicant ('Medtronic') and the first respondent ('Capital Endovascular') concluded a so-called Strategic Co-operation Agreement, in terms of which *inter alia* the first respondent purchased medical equipment from the applicant. In terms of the dispute resolution provision (clause 19(5) to (10)) of the said agreement, the parties agreed that any unresolved dispute arising out of or in connection with the Strategic Co-operation Agreement would be referred to arbitration under the auspices of the Arbitration Foundation of Southern Africa ('AFSA').

[2]. During 2021 such a dispute as envisaged by clause 19(5) to (10) indeed arose between Medtronic and Capital Endovascular. It was alleged by Medtronic that it was owed amounts totalling ZAR66 224 636 by Capital Endovascular in respect of goods sold and delivered and services rendered, which Capital Endovascular had failed to pay timeously. On 26 May 2021, Medtronic referred the said dispute to arbitration. Mr Christopher Loxton SC, Senior Counsel at the Johannesburg Bar, was duly appointed as the Arbitrator to adjudicate the dispute.

[3]. During April 2022, the parties commenced settlement negotiations in an endeavour to settle the dispute referred to arbitration. On 24 April 2022, as evidenced by undisputed email correspondence between the representatives of the parties, they reached agreement on the settlement terms. The respondents, so the applicant avers, were to pay it the settlement amount of R48 million

(excluding VAT). By 11 July 2022 the agreement of settlement between Medtronic, Capital Endovascular and the second respondent ('Africa Healthcare'), had been reduced to writing in terms of a written settlement agreement and an addendum thereto, which were signed for and on behalf of Medtronic by a Mr Loganathan Naidoo and Capital Endovascular by a Mr Mahendren Moodley, who was, at the relevant time an officer of Africa Healthcare. The written settlement agreement provided that same was to be made an award of the Arbitrator, which was done by agreement between all of the parties, being Medtronic and Capital Endovascular and Africa Healthcare.

[4]. In this opposed application, which came before me as a Special Motion on 22 April 2025, the Medtronic applies to have the award of the Arbitrator made an order of this court. Medtronic also applies for judgment against Capital Endovascular and African Healthcare for the balance of the capital amount of the award, together with interest thereon and costs of suit. Capital Endovascular opposes the application primarily on the basis that the settlement agreed to by it was for payment of the capital amount of R32 million (exclusive of VAT) and not for payment of R48 million, as claimed by Medtronic. The foregoing is evidenced, so Capital Endovascular contends, by the fact that at one place in the written settlement agreement the amount of R32 million is expressly mentioned in words, although it is so that the amount of R48 million is reference in numbers. This, so Medtronic avers, was clearly a patent error and the intention of the parties have always and inevitably been that the respondents, jointly and severally, were to pay it (Medtronic) R48 million plus VAT. African Healthcare filed a notice of intention to oppose but has failed to file any answering papers. Medtronic has proceeded against it separately on an unopposed basis.

[5]. Therefore, in issue in this application is simply whether Capital Endovascular had agreed to pay to Medtronic R48 million (VAT exclusive) in settlement of the dispute between them. I am therefore required to interpret the agreement concluded between the parties on the basis of the principles applicable to the interpretation of contracts. I interpose here to note that a

number of other defences are also raised by Capital Endovascular, which I will deal with in due course.

[6]. There is also a 'counterapplication' launched by Capital Endovascular for rectification of the settlement agreement that forms the subject-matter of the main application. Capital Endovascular asks that the agreement be rectified to reflect the settlement amount as R32 million plus VAT, as against R48 million. The result of this counterapplication would axiomatically follow on my finding relating to the main application. In other words, in the event of me finding for the applicant in the interpretation of the settlement agreement, then it follows that the counterapplication should be dismissed. Capital Endovascular also applies for a declarator of an indemnification by African Healthcare in favour of Capital Endovascular for any and all claims by Medtronic against Capital arising under the settlement agreement. This application is unopposed by African Healthcare and I accordingly intend granting an order by default against it.

[7]. The issues in this matter are to be decided against the factual backdrop, the important facts being by and large common cause. I deal with the facts in paragraphs which follow as and when I deal with a discussion and an analysis of the matter.

[8]. The *dramatis personae* in this matter are: (a) Medtronic and Capital Endovascular, who were the two parties to the Strategic Cooperation Agreement; (b) African Healthcare, which was interposed by Capital Endovascular in the arbitration proceedings to settle the dispute with Medtronic; (c) Mr Logan Naidoo ('Mr Naidoo') is the sole director and shareholder of Capital Endovascular and he is the one who signed the Strategic Cooperation Agreement and settlement agreement on behalf of Capital; and (d) Mr Mahendren Moodley ('Mr Moodley'), who is a director of African Healthcare and who was given a proxy and power of attorney by Capital Endovascular to represent it and to settle the arbitration.

[9]. As I have already indicated, it is common cause that by 24 April 2022 the dispute between Medtronic Africa and Capital Endovascular, which formed the subject of the Arbitration, was settled by these two parties and Africa Healthcare on the basis that Capital Africa and Africa Healthcare would pay to Medtronic Africa R48 million plus 15% VAT (R7.2 million) = R55.2 million in full and final settlement of Medtronic Africa's claim against Capital Africa. About the foregoing there can be no doubt. This is borne out by an email communication dated 22 April 2022 from Medtronic Africa to Mr Moodley on behalf of Capital Africa and Africa Healthcare in which the following offer is made:

“* Our revised offer is a full settlement of **ZAR 48m + VAT**.

- For avoidance of doubt, the amount above **includes interest on delayed payments** (we applied approx 1.00% per month instead of 1.50% per month as a final gesture of goodwill).
- We are prepared to **bear our own legal expenses** (we received the legal expenses breakdown from our counsel and it amounts to ZAR 2.5m – this is only FYI).
- Settlement to be effected to Medtronic as a **single** payment **without delay**.
- This offer is **final** and valid only on the premise that we receive a **written acceptance** from yourselves (as incoming investors) and Mr Naidoo (as current owner) in the **next 24 hours** with a commitment **to sign the (tri-party) settlement agreement early next week** (no later than Tuesday COB)
-’ (Emphasis as per original communiqué).

[10]. On 24 April 2022, Mr Moodley responded per return email as follows on behalf of Capital Endovascular and Africa Healthcare:

‘Thank you for your note. The final amount below is acceptable.

Thank you for the effort in closing this.

We are happy with the same.

Let's discuss the paperwork tomorrow and close out the same.’

[11]. As the saying goes, so far so good. The matter had been settled. The difficulty arose when on 28 June 2022 Mr Moodley sent a scanned settlement agreement to Mr Kourieh (the official at Medtronic, who was intimately involved on behalf of Medtronic in the settlement negotiations), which settlement

agreement indicated the settlement amount as being R48 million in numbers and R32 million in words. It was signed on behalf of Capital Endovascular by Mr Naidoo and by Mr Moodley on behalf of Africa Healthcare.

[12]. On 8 July 2022 the attorneys for Medtronic Africa sent an email to Messrs Naidoo and Moodley, attaching the final settlement agreement, which clearly and unequivocally provided for a settlement amount of R48 million. On the same date, the said attorneys addressed a letter to the Arbitrator in which he stated that Medtronic will seek an award on the terms of the settlement agreement on Monday, 11 July 2022, when the arbitration was scheduled to resume. The email to the Arbitrator was also sent to Mr Naidoo and Mr Moodley.

[13]. On Monday, 11 July 2022, the Arbitrator made the settlement agreement and an addendum thereto an Award. The question to be considered is therefore whether the R32 million in words in the agreement initially signed by Messrs Naidoo and Moodley was simply a typographical error, which did not detract from the intention of the parties to agree a settlement amount of R48 million (VAT excluded).

[14]. Subsequently, Capital Endovascular and/or Africa Healthcare made payment of an amount of R34.2 million to Medtronic, leaving, according to Medtronic Africa, a balance of R21 million outstanding, which it is claiming is these proceedings. Capital Africa alleges that it has complied with its obligations under the settlement agreement as the settlement amount has been paid in full.

[15]. Deciding the foregoing issue requires an interpretation of the contract concluded between the relevant parties. In that regard, it is so, as submitted by Mr Bothma SC, who appeared on behalf of Medtronic, that the interpretative exercise should be done on the basis of the principles enunciated by the

Supreme Court of Appeal¹, which have become trite. The inevitable point of departure is the language of the provision itself, read in context, having regard to the purpose of the provision and the background to the preparation and production of the contract. The subsequent conduct of the parties is also relevant.

[16]. Medtronic submits that on a proper interpretation of the settlement agreement with reference to the factual matrix as alluded to *supra*, the inescapable conclusion to be reached is that the parties agreed to a settlement amount of R48 million. I agree with this submission. It is common cause between the parties that an initial offer of R50 million (exclusive of VAT) was initially considered by the parties. Medtronic then presented a revised settlement proposal of R48 million, which Mr Moodley accepted on behalf of Capital Endovascular and Africa Healthcare. At no stage during any of the settlement discussions is the R32 million mentioned by any of the parties. The rhetorical question to be asked is how the settlement discussions relating to R48 million translate into a R32 million settlement.

[17]. Moreover, Mr Moodley subsequently confirmed that the settlement amount was in fact R48 Million and that the reference to R32 million in words was an error. The simple fact of the matter is that there is no evidence whatsoever that either party proposed, or that the parties ultimately agreed, a settlement amount of R32 million. This sum appears to have been plugged out of the air opportunistically by Capital Endovascular after the typographical error was discovered by it.

[18]. I therefore conclude that the settlement agreement concluded between the parties, properly and purposively interpreted in context, provided for a settlement sum of R48 million plus value added tax. I reach the same conclusion if one is to regard the dispute between the parties as a factual one.

¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA). Also see: *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA).

All things considered, and having regard to the undisputed evidence before me as elaborated upon above, it can safely be said that the version of Capital Endovascular can and should be rejected on the papers as being untenable and far-fetched.

[19]. Capital Endovascular also contends that Mr Moodley lacked the necessary authority to act on its behalf in the conclusion of the settlement agreement. The case on behalf of Capital Endovascular is that Mr Moodley was mandated to negotiate, but not to conclude, the settlement agreement, and that the consent of the company was required on the terms and conditions of the settlement.

[20]. There is no merit in this contention – none whatsoever. An unfettered power of attorney was provided by Capital Endovascular to Medtronic, which was transmitted by Mr Naidoo directly to Medtronic. Quite clearly, in the power of attorney, Mr Moodley was mandated not only to negotiate, but also to settle the dispute between Medtronic and Capital Endovascular. Mr Moodley clearly did that.

[21]. In any event, as submitted by Mr Bothma SC, it is trite that a principal in the position of Capital Endovascular cannot by way of alleged private instructions to Mr Moodley, as its representative, curtail the latter's authority as far as Medtronic as the third party is concerned. Accordingly, the alleged limitations or restrictions do not assist Capital Endovascular at all in this matter. Moreover, at a factual level, there is no evidence whatsoever proffered that Capital Endovascular did not approve the settlement amount of R48 million but only approved an amount of R32 million. That, in my view, spells the end of that defence. On the evidence before me, I accept that at no point was Mr Moodley mandated to settle the matter at R32 million. On the contrary, he represented that he was duly authorised, initially to propose a settlement amount of R50 million plus VAT following alignment with Mr Naidoo, which he did, and later to accept Medtronic's revised settlement offer of R48 million plus VAT, which he did on behalf of both Capital Endovascular and Africa Healthcare.

[22]. In light of my foregoing findings, it follows that the rectification application by Capital Endovascular should fail. A case for rectification is not made out by Capital Endovascular. The antecedent negotiations between the parties show that the settlement agreement was for the amount of R48 million. There can be no doubt that there was no agreement between Medtronic and Capital Endovascular for an amount of R32 million. It is only these two choices that are open to the Court, R48 million or R32 million. The documentary evidence shows that the settlement agreement was for the amount of R48 million.

[23]. Capital Endovascular furthermore contends that the Award of the Arbitrator is unenforceable. In the event of non-compliance with the settlement agreement, so the contention on behalf of Capital Endovascular goes, Medtronic could either enforce the agreement by seeking an Order directing payment or proceed with arbitration for the full value due to it. Accordingly, the Arbitrator's Award was not final and left Medtronic with options due to it. There is no merit in this submission. I agree with the contention on behalf of Medtronic that the foregoing submission by Capital Endovascular is nonsensical. The simple point is this. The fact that Medtronic had options available to it does not detract from the validity of the settlement agreement. In any event, Medtronic has elected to enforce the settlement agreement against the respondents in accordance with the Arbitration Act.

[24]. Moreover, it is trite that section 31(1) of the Arbitration Act, 42 of 1965 empowers a Court, on application by Medtronic, to make the Award an Order of Court.

[25]. I therefore conclude that Medtronic has made out a clear case for the relief sought and for an order making the award granted by the Arbitrator an Order of Court. There is no merit in the claim for rectification or the defences set out by Capital Endovascular.

[26]. Accordingly, the applicant's application to have the Arbitrator's award made an Order of Court should be granted and the first respondent's rectification application falls to be dismissed with costs,

Costs

[27]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*².

[28]. I can think of no reason why I should deviate from this general rule. The applicant should therefore be granted its costs of its main application, as well as the costs relating to the first respondent's counterapplication.

Order

[29]. In the result, I make the following order:

- (1) The Arbitration Award dated 11 July 2022 by the Arbitrator, Mr Christopher Loxton SC, and handed down / published by him on the same date, being 11 July 2022, be and is hereby made an Order of this Court.
- (2) The first respondent is ordered to comply with the settlement agreement concluded between it and the applicant on 29 June 2022, read with addendum 1 thereto dated 11 July 2022 ('the settlement agreement').
- (3) The first respondent shall pay to the applicant the capital amount of R21 million, together with interest on the said sum of R21 million at the prescribed legal rate of interest of 8.25% per annum, calculated from 22 July 2022 to date of final payment.
- (4) The first respondent shall pay the applicant's costs of this opposed application, including the costs of two Counsel, one being Senior Counsel (where so employed), on scale 'C' of the applicable tariff provided for in the Uniform Rules of Court.

² *Myers v Abrahamson* 1951(3) SA 438 (C) at 455

- (5) The first respondent's counterapplication for rectification of the settlement agreement be and is hereby dismissed with costs.
- (6) The first respondent shall pay the applicant's costs of the opposed counterapplication, such costs to include the costs consequent upon the utilisation of two Counsel, one being Senior Counsel (where so employed), on scale 'C' of the applicable tariff provided for in the Uniform Rules of Court.
- (7) It be and is hereby declared that the second respondent has indemnified the first respondent for any and all claims made by the applicant against the first respondent under the settlement agreement concluded between the parties on 29 June and 11 July 2022 ('the settlement agreement').
- (8) The second respondent is liable to the first respondents for any and all amounts which the first respondent is ordered to pay to the applicant by this Court under the case number 2022-046095.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	22 April 2025
JUDGMENT DATE:	5 August 2025 – Judgment handed down electronically
FOR THE APPLICANT:	H C Bothma SC, with L S Crow
INSTRUCTED BY:	DLA Piper South Africa (RF) Inc, Sandown, Sandton
FOR THE FIRST RESPONDENT:	I Pillay SC, with I Veerasamy
INSTRUCTED BY:	Maynard Menon Govind Singh Inc, Westville, Durban, Kwazulu-Natal
FOR THE SECOND RESPONDENT:	No appearance
INSTRUCTED BY:	No appearance – Attorneys withdrew