

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



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

CASE NO: 16432/2019

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED; ~~YES~~/NO

SIGNATURE:

DATE

In matter between:

**MERCEDES-BENZ FINANCE AND INSURANCE,
A DIVISION OF MERCEDEZ-BENZ FINANCIAL SERVICES
SOUTH AFRICA (PTY) LTD**

APPLICANT

and

LERUMA EMMANUEL THOBEJANE

RESPONDENT

JUDGMENT

STONE AJ

[1] The applicant applies for relief based on a settlement agreement which agreement was made an order of court (the settlement order). In terms

thereof the respondent consented to judgment if he breached the terms thereof. The applicant relies thereon that the respondent had indeed breached the settlement order by failing to make the agreed payments in terms thereof, and that it is entitled to judgment against the respondent. The respondent opposes the application on various grounds.

- [2] Mr Minnaar appeared in the application on behalf of the applicant. The respondent appeared in person, fully robed, indicated that he is a practicing attorney, and that he chose to proceed on that basis. He had also done so in previous proceedings between the parties.

PREVIOUS PROCEEDINGS

- [3] Before dealing with the present application, and the defences raised by the respondent in respect thereof, it is expedient to briefly set out the history and nature of previous proceedings in this court and in the Supreme Court of Appeal, which are relevant to the present application.
- [4] It is common cause that the applicant instituted an action by way of a combined summons against the respondent in 2019, based on a written credit agreement, in terms whereof the respondent purchased from the applicant a luxury Mercedes-Benz motor vehicle ("the vehicle") for the sum of R1 603 144.61.
- [5] In terms of the credit agreement, the parties *inter alia* agreed that ownership of the vehicle would remain vested in the applicant until all amounts due to the applicant in terms of the agreement were paid in full.
- [6] The credit agreement *inter alia* provides that, in the event of the breach of the agreement by the respondent, the applicant would, after demand, be entitled to cancel the agreement, take repossession of the vehicle, retain monies already paid in terms of the agreement, and claim payment of the difference between the balance outstanding and the amount realised. The credit agreement contains various other terms and conditions typically found

in such a credit agreement, which are not necessary to repeat in this judgment.

- [7] In its particulars of claim the applicant avers that the Respondent has failed, despite demand, to make all due and punctual monthly payments to the applicant, and that, as at the date of the summons, the respondent was in arrears with payment and the total outstanding balance on the respondent's account was R1 360 150.01.
- [8] In its particulars of claim it is alleged that the applicant elected to cancel the credit agreement, to take possession of the vehicle, and to claim the difference between the balance outstanding and the amount realised for the vehicle. The applicant tendered payment to the respondent of any excess, should the value of the vehicle exceed the full balance outstanding by the respondent.
- [9] It appears from the particulars of claim and annexures thereto that the necessary notice in terms of Rule 129(1)(a) of the National Credit Act, 34 of 2005 ("NCA") was served by the applicant, and it is alleged that the respondent did not surrender the relevant property to the applicant as contemplated in section 127 of the NCA. It is further alleged that no claim was pending as contemplated in section 130 of the NCA and that applicant was not aware of any debt proceedings as envisaged in section 86 of the NCA.¹ It is not disputed that applicable provisions of the NCA were complied with.
- [10] The following relief was sought by the applicant in its particulars of claim, which was later incorporated in the settlement order, as relief to which the respondent consented if he breached the settlement order:

¹ A compliance affidavit was also filed by the applicant's attorney for purposes of the present application, confirming compliance with sections 129 and 130 of the National Credit Act 34 of 2005. This was not disputed by the respondent.

- a) Cancellation of the credit agreement entered into between the applicant and the respondent.
- b) An order authorising the Sheriff of the High Court to attach, seize and hand over the vehicle to the applicant.
- c) Costs of the suit.
- d) That the applicant be given leave to approach the court on the same papers duly supplemented for payment of the difference between the balance outstanding and the market value of the vehicle, in the event of there being a shortfall until the vehicle has been repossessed and sold or re-leased and there being a balance outstanding by the respondent to the applicant.
- e) Further and/or alternative relief.

[11] The respondent initially opposed the action, filing a notice of intention to defend on 14 October 2020, after service of the summons and particulars of claim. Pleadings were subsequently exchanged, discovery was made, and the action proceeded to the point where it was set down for trial.

[12] On the date of the trial, 5 August 2021, the matter was apparently not on the trial roll, but the parties concluded a settlement agreement which was signed on behalf of the applicant, and signed by the respondent personally.² The settlement agreement made provision that it would be made an order of court.

[13] The applicant subsequently applied to this court that it be made an order of court. The respondent however opposed such application. After hearing such opposed application, Vermeulen AJ handed down judgment on 3 March 2023, granting an order in terms of which the aforesaid settlement agreement was made an order of court (the settlement order). The respondent was ordered to pay the costs of the application.

² Vermeulen AJ found in paragraph [4.3] of his judgment of 3 March 2023 (referred to *infra*), that the parties “were able to compromise their disputes and on 4 April 2021 entered into a written Deed of Settlement. Mr Thobejane signed the Settlement on the 4th August and the Applicant on the 5th of August 2021”

[14] Thereafter, the respondent applied for leave to appeal against the aforesaid order of Vermeulen AJ, who refused the application for leave to appeal on 26 May 2023. The respondent then lodged an application for leave to appeal on 22 June 2023 to the Supreme Court of Appeal, which court dismissed such application on 25 August 2023. The aforesaid settlement agreement therefore remained an order of court at all relevant times from 3 March 2023.

[15] On 1 December 2023 the applicant proceeded to file the application which presently serves before this Court, based on the respondent's breach thereof, to enforce the settlement order, and obtain judgment which the respondent had consented to in terms thereof.

THE SETTLEMENT ORDER

[16] In the preamble of the settlement order, it was recorded:

- a) That the applicant had instituted a claim for the relief (as set out in the particulars of claim). Such relief is the relief mentioned in paragraph [10] above;
- b) That the respondent filed a notice of intention to defend;
- c) That the parties have come to an agreement regarding the action and that they desire to have same recorded and made an order of court, subject to the court's approval.

[17] Paragraph 1 of the agreement reads as follows:

"ACKNOWLEDGEMENT OF INDEBTEDNESS:

"The Defendant acknowledges himself to be truly and lawfully indebted and bound unto the Plaintiff in the sum of R1 461 966.45 together with interest at the contractually agreed upon rate and costs as well as all administrative charges ("the full outstanding balance")".

[18] Under the heading "**PAYMENT**":

- a) Paragraph 2.1 provides that *“the Defendant shall pay the amount of R292 393.29 per month, in 5(five) consecutive payments, directly to the plaintiff, with the first payment being due on or before 30 September 2021 and thereafter on or before the first day of each month until the full outstanding balance and legal costs have been settled in full;”*
- b) Paragraph 2.2 provides that all payments must be made directly to the applicant’s attorneys of record.
- c) Paragraph 2.3 provides that the agreement would remain in force until the full outstanding balance was settled by the respondent in full.
- d) Paragraph 2.4 provides that, should the respondent fail to duly comply with the arrangements as set out in the agreement in any manner *“the provisions of paragraph 4 shall immediately come into effect”*.

[19] Paragraph 4 of the agreement, under the heading “**BREACH**”, provides as follows:

- “4.1 Should the Defendant fail to comply with this agreement in any manner whatsoever or should he fail to make payments of any of the amounts referred to in paragraph 2 above, he will be in breach of this agreement.*
- 4.2 Should the Defendant breach the agreement in any manner whatsoever the full outstanding balance (as per clause 1.1 above) will immediately become due, owing and payable to the Plaintiff and the Plaintiff shall be immediately entitled to apply for an order in terms of prayers A-E above³, as set out in the particulars of claim under the abovementioned case number. The Defendant hereby unequivocally consents to such order, in full, and shall sign a formal consent to judgment herewith”*
- 4.3 The Plaintiff shall be entitled to retain all payments already made in terms of this agreement before default occurred.*

³ These prayers contain the relief as set out in the particulars of claim. It was also repeated in the preamble to settlement agreement, as referred to in paragraph [10] above. The applicant seeks judgment for such relief in the present application.

4.4 *The Defendant hereby agrees that the Plaintiff may proceed to issue a warrant of execution should the Defendant breach the terms of the agreement in any way.*”

[20] In terms of paragraph 5.1 of the agreement, the parties consented that the deed of settlement be made an order of Court.

[21] Paragraph 5.2 provides:

“The Defendant waives compliance with the rules of court as well as the requirements of service in so far as any application is brought to make this settlement agreement an order of court”.

[22] In paragraph 6 of the agreement it was *inter alia* recorded that it represents a settlement entered into between the parties in respect of the aforesaid action (case number 16432/2019), and a non-variation clause is included, in terms whereof no variation of the agreement shall be of any force or effect unless reduced in writing.

[23] In terms of paragraph 7 of the agreement the respondent, by signature of the agreement, confirmed that:

- a) He has read the settlement agreement and that he fully understands the contents thereof;
- b) the settlement agreement was not a novation or variation of the agreement concluded on which the summons was originally issued;
- c) a certificate, signed by a manager of the applicant, shall at any time be *prima facie* proof of the balance outstanding and owing to the applicant.

THE EFFECT OF THE SETTLEMENT ORDER

[24] It is necessary to differentiate between the two possible applications for which the settlement order provides. In the first place, the settlement provides in paragraph 5 that it would be made an order of court at the

hearing or “on Application”. Such application was made, which resulted in the order of 3 March 2023. Paragraph 4.2 of the agreement of settlement further expressly provides that the applicant would be entitled, upon a breach of the agreement in any manner whatsoever, “to apply” for an order in terms of the prayers set out therein, to which the respondent unequivocally consented in full.⁴ This clearly contemplates a second application, which could be made if he breached the settlement order.

[25] The relief which the applicant claims in the present application, is that judgement be granted to which the respondent already consented in paragraph 4.2 of the settlement order.

[26] In **Eke v Parsons**⁵ the Constitutional Court explained the effect on a settlement agreement which was made an order of court:

“Once a settlement agreement has been made an order of court, it is an order like any other. It will be interpreted like all court orders...”

[27] In paragraph [31] of the judgement⁶ the Constitutional Court further explained:

“The effect of a settlement order is to change the status of rights and obligations between the parties. Save for litigation that may be consequent upon the nature of the particular order, the order brings finality to the lis between the parties; the lis becomes res judicata (literally, ‘a matter judged’). It changes the terms of a settlement agreement to an enforceable court order. The type of enforcement may be execution or contempt proceedings. Or it may take any other form permitted by the nature of the order. That form may possibly be some litigation the nature of which will be one step removed from seeking committal for contempt; an example being a mandamus”⁷

⁴ The terms as set out in paragraph [10] above.

⁵ 2016(3) SA 37 (CC) at paragraph [29]

⁶ At paragraph [31]

⁷ See also *York Timbers Ltd v Minister of Water Affairs and Forestry* 2003 (4) SA 477 (T) at 500 G-H; *Dadel Valk Boerdery v Greyling* 2006 JDR 1054 (T) paragraphs [9] to [11].

[28] After the court had discussed the possibility, in some cases, that a litigant will have to approach the court again to enforce a settlement order (for example in a case such as the present which allows for payments in instalments and further steps in the event of a breach), Madlanga J concluded in paragraph [36]:

“In sum, what all this means is that, even with the possibility of an additional approach to court, settlements of this nature do comport with the efficient use of judicial resources. First, the original underlying dispute is settled and becomes res judicata. Second, what litigation there may be after the settlement order will relate to non-compliance with this order, and not the original underlying dispute. Third, matters that culminate in litigation that proceeds are fewer than those that don’t.”

[29] The present application can be considered as such “an additional approach to court” by the applicant, to enforce the terms of the settlement order, as the payment provisions in terms thereof were not complied with, and paragraph 4.2 of the settlement order provides for such second approach.

[30] *In casu* it is not open to the respondent to dispute that the settlement agreement was entered into between the parties and that it was made an order of court. These aspects have been dealt with comprehensively in the judgment of Vermeulen AJ in terms of which it was made an order of court, and all the respondent’s attempts to obtain leave to appeal did not succeed. The settlement agreement stands as a court order, with the status as set out.

THE PRESENT APPLICATION

[31] It is necessary to describe relevant contents of the notice of application and affidavits filed by the parties in this application, as it relates both to the nature of the application and the form in which it was couched, and to the defences raised by the respondent.

- [32] The applicant's notice of application is titled "*NOTICE OF APPLICATION BY DEFAULT IN TERMS OF RULE 31(5)(A)*". It was evidently intended to refer to Rule 31(5)(a), if regard is had to the fact that an application by default is described in such rule, and as no subrule of rule 31(5) exist with a capital "A". I will proceed to deal with the application on that basis. Nothing turns on this obvious typographical error.
- [33] The applicant's notice of application was accordingly compiled in the form of a default judgment application. It starts out by mentioning that application will be made, in circumstances set out therein. It then contains a chronological rendition of the material circumstances, and relevant papers filed, since the combined summons was issued by the applicant against the respondent in March 2019 up to the point when the settlement agreement was made an order of court on 3 March 2023. It then continues with a summary of the appeal proceedings mentioned above until the judgment was delivered by the Supreme Court of Appeal on 25 August 2023 (dismissing the respondent's application for leave to appeal to such court).
- [34] The relief claimed is then set out.⁸ The notice concludes with a statement that the application is supported by the Combined summons, return of service, notice of intention to defend, plea, settlement agreement and the aforesaid judgments of 3 March 2023 and 31 August 2023.
- [35] The application is supported by an "AFFIDAVIT IN SUPPORT OF DEFAULT JUDGMENT", by the applicant's attorney, the aforesaid compliance affidavit, and an affidavit by the attorney confirming that the summons, particulars of claim and annexures thereto, as well as the return of service were true copies of originals⁹.
- [36] In the affidavit the attorney confirms in chronological order the history of proceedings leading up to the application. It can be summarised as follows:

⁸ This is the relief as set out in paragraph [10] *supra*.

⁹ The respondent did not dispute the contents of such affidavits, nor responded thereto.

- a) After summons was issued, the matter was opposed. A summary judgment application was made, however leave to defend was granted, and thereafter pleadings were exchanged, and the parties made discovery. The matter was eventually set down for trial for 5 August 2021.
- b) The applicant and the respondent concluded the abovementioned settlement agreement, and the applicant made application that it be made an order of Court, which was opposed but granted by Vermeulen AJ on 3 March 2023, as indicated *supra*.
- c) The attorney further describes the application for leave to appeal in this court, which was dismissed, and events that led up the Supreme Court of Appeal's dismissal of the respondent's application for leave to appeal on 25 August 2023.¹⁰

[37] The attorney concludes the statements in the affidavit by confirming:

- "18. The Defendant is in default of the duly signed and attested settlement agreement which was made an order of Court on or about the 3d of March 2023".*
- 19. To date, the Defendant has not made the required payments, have not brought the payments due under the settlement agreement up to date and no payment plan has been agreed to pursuant to such breach.*
- 20. The Defendant therefore humbly requests that Default Judgment be granted in terms of Rule 31(5)(A), as the Defendant is in breach of the Settlement agreement which was made an order of court."*

[38] An analysis of the application shows that the applicant in reality does not rely on circumstances such as provided for by Rule 31(5)(a). Such rule provides for default judgement where a defendant has failed to file a notice of intention to oppose or a plea. *In casu* the action was opposed, and such notice, and a plea, were filed in the action. The real basis for the application,

¹⁰ In a letter of the Registrar of the Supreme Court of Appeal dated 31 August 2023, it is stated that such Court on 25 August 2023 dismissed the respondent's application for leave to appeal, which was lodged on 22 June 2023.

as it appears from the application, is that the respondent is in default of the settlement order, as he has failed to comply with the aforesaid settlement agreement which was made a court order. I will return to the consequences of this, and the form of the application, herein below.

[39] The respondent filed a notice of intention to oppose the application and an answering affidavit on Carelines, in response to the application. His contentions therein all relate to alleged circumstances surrounding a warrant for the delivery of the vehicle, issued by the applicant, which allegations include the following:

- a) The applicant had fraudulently approached the court for the issuing of a warrant for delivery of the vehicle in September 2023, whilst being fully aware that that matter was on appeal before the Supreme Court of Appeal.
- b) The applicant has not explained the circumstances under which such warrant was issued, which is alleged to have been fraudulent.
- c) The warrant was issued in violation of the terms of the settlement agreement, and for malicious and fraudulent purposes.
- d) The applicant has not withdrawn the warrant, and the applicant has not given an explanation regarding the grounds upon which the warrant of delivery was issued *“other than an observation by the respondent that the warrant of delivery could only have been obtained by the applicant by misrepresenting to the court and registrar that the applicant was entitled to request the court to issue such a warrant for delivery.”*
- e) *“The applicant could have obtained the issuing of warrant of delivery upon the granting of the orders of a cancellation order and an order for the delivery of the vehicle on application by the applicant to the court”.*
- f) That in the absence of such application, the only way in which the warrant could have been obtained was *“presumably”* by fraudulent misrepresentation to the Registrar and the court that the applicant was entitled to the issuing of a warrant of delivery of the vehicle.
- g) That the court was rendered *functus officio* as a result of the applicant *“having obtained fraudulently so a cancellation order and an order of*

delivery of the vehicle upon which the warrant of delivery was issued by the honourable court in September 2023”.

- h) That the applicant must “*first set aside its fraudulent orders and warrant of delivery before approaching the honourable court by way of the application*”.
- i) The respondent, in the result, prayed for the dismissal of the application with costs.

[40] The respondent however did not dispute the allegations in the applicant’s attorney’s affidavit that he breached the settlement order, and that he did not make the required payments in terms thereof.

[41] He also did not dispute the applicant’s attorney’s rendition of the history of the proceedings which preceded the application, nor the contents of the other affidavits filed therewith.

[42] The applicant filed a replying affidavit, wherein it’s attorney replied to the allegations of the respondent, *inter alia* stating the following:

- a) A warrant of delivery of the vehicle was sent to Court, issued on 5 June 2023, after the respondent’s application for leave to appeal to this Court was dismissed (by Vermeulen AJ) on 26 May 2023;
- b) the warrant was sent to the sheriff on 15 June 2023 to be served, prior to respondent’s application for special leave to appeal to the Supreme Court of Appeal. It is stated that such application for leave to appeal was served on 20 June 2023¹¹;
- c) the warrant was not sent to the Sheriff during September 2023, as alleged by the respondent.
- d) the sheriff was instructed on 21 June 2023 to stop the execution of the warrant pending the outcome of the respondent’s application for leave to appeal to the Supreme Court of Appeal. The applicant’s attorney denies

¹¹ According to the letter of the Registrar of the Supreme Court of Appeal the respondent’s application for leave to appeal to such Court was only lodged with the Registrar on 22 June 2023.

allegations that the warrant was issued fraudulently, and contends that it was issued in good faith.

- e) It is confirmed that the present application was made as the respondent defaulted on its payment obligations contained in the settlement agreement.

THE APPLICANT'S CONTENTIONS REGARDING THE SETTLEMENT ORDER

[43] Counsel for the applicant contended that the true reason for the application is that the applicant seeks to enforce the settlement order, as the respondent is in breach thereof, having failed to make the required payments.

[44] The applicant contends that it is entitled to an order as prayed for in the application. Such relief is expressly provided for in terms of paragraphs 2.4 and 4 of the settlement order.

[45] Mr Minnaar submitted that allegations in the applicant's attorney's affidavit which the respondent has failed to admit or deny, should be accepted as correct. In this regard he primarily referred to the fact that the respondent did not deny that he failed to make payments due in terms of the settlement order.

[46] A conspectus of the respondent's answering affidavit shows that it is indeed correct that the respondent did not deny the allegation in the applicant's attorney's affidavit that he did not make the payments as required in terms of the settlement agreement. This stands undisputed on the papers, and it can be accepted as true.¹² The respondent also did not in argument dispute the allegations that he had failed to make the required payments.

[47] Mr Minnaar also argued that the respondent already unequivocally consented to judgement as sought by the applicant, in terms of the

¹² Moosa and Another v Knox; Park v Knox 1949 (3) SA 327 (N) at 331; United Methodist Church of South Africa v Sokufundumala 1989 (4) SA 1055 (O) at 1059A;

settlement order, and that the respondent did not present a valid defence to a claim that judgment be granted.

[48] I will deal with his contentions regarding the applicability of Rule 31(5)(a) where it is discussed below.

THE DEFENCES RAISED BY THE RESPONDENT, IN RESPECT OF THE WARRANT AND SUSPENSIONS BASED ON APPEAL PROCEDURE

[49] In argument the respondent persisted with contentions based on the allegations regarding the issuing of a warrant by the applicant. He also raised arguments not mentioned in his answering affidavit, based on the periods during which the appeal procedures were pending.

[50] His arguments were mostly based thereon that the order of Vermeulen AJ of 3 March 2023 was suspended when he applied for leave to appeal to this Court, and thereafter, when his application for leave to appeal was pending before the Supreme Court of Appeal.

[51] His contentions that the operation and execution of proceedings were suspended while applications for leave to appeal were pending, are evidently based on the provisions of Section 18(1) of the Superior Courts Act 10 of 2023. It provides that, subject to Sections 18(2) and 18(3), and unless the Court in exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave appeal or of an appeal, is suspended pending the decision of the application or appeal.

[52] In consideration of his contentions, I have firstly considered the periods during which the order of Vermeulen AJ of 3 March 2023 would have been suspended, having regard to the relevant periods during which his applications for leave to appeal were pending. It appears from the dates of the applications and the relevant judgments, and said letter from the Registrar of the Supreme Court of appeal dated 31 August 2025 (wherein

the date of lodgement and dismissal of the appeal in such Court were mentioned) that a suspension was in effect from 17 March 2023 when the respondent filed an application for leave to appeal in this Court, until 29 May 2023 when the application was dismissed by Vermeulen AJ. Thereafter a suspension was again in effect from 22 June 2023 when the application for leave to appeal was lodged in the Supreme Court of Appeal, until leave to appeal was refused by such court, on 25 August 2023.

- [53] The respondent's allegations that a warrant for delivery was incorrectly or fraudulently issued in September 2023, cannot be correct. In the first place, the respondent provided no evidence in his papers that a warrant was issued in September 2023. On the other hand, the dates mentioned in the affidavit of the applicant's attorney materially accord with the papers on record. I am therefore inclined to accept the evidence of the respondent's attorney that a warrant was issued and sent to the sheriff on 15 June 2023, and not in September 2023, and that the Sheriff was instructed on 21 June 2023 to stop the execution. It is common cause that the respondent remains in possession of the vehicle. In the absence of evidence by the respondent to show the contrary, and as the probabilities do not favour his contentions, I find that the warrant was probably issued, sent to the Sheriff, and recalled while no suspension was in operation.
- [54] His allegation that "*fraudulent orders*" should be set aside by the applicant is equally unsupported, vague and apparently incorrect. If this include a reference to the settlement order, his contention must be rejected. This court per Vermeulen AJ already found it to be valid and binding.
- [55] The facts in this matter do not support the respondent's other allegations of fraudulent conduct. Even if he is correct that the warrant was issued at a time when the order of 3 March 2023 was suspended, the respondent has failed to prove that the applicant acted fraudulently. In support of his contentions that the warrant was issued fraudulently, the respondent referred

to authority¹³ that a court will not allow a person an advantage which he obtained by fraud. In such judgment it was held that a court “*is careful to find fraud unless it is distinctly pleaded and proved*”. Allegations of fraud must indeed not only be alleged, but also proved on a balance of probabilities, bearing in mind that fraud is not easily inferred.¹⁴

- [56] The respondent has failed to set out sufficient facts to make out a case of fraud. His allegations or inferences of fraud are speculative and unsupported by facts and dates to clearly prove an intent to defraud. Even if the respondent was correct that the warrant could not have been issued when it was, the available facts do not support allegations that it was done fraudulently. Apart from the fact that the settlement order expressly provides for the issuing of a warrant in the event of a failure by the respondent to comply therewith, the attorney of the applicant’s conduct also does not show a fraudulent intent. On the available facts, the warrant was issued when there was no pending appeal, and the attorney stopped the Sherrif from proceeding when a further application was pending. This does not amount to fraudulent conduct.
- [57] The respondent submitted in argument that the *ex turpi causa non oritur actio* maxim somehow applies. The respondent did not develop this contention in argument. It was not made clear how the maxim could find application. The settlement order is not a *turpi causa*. It is an order of court. The warrant can also not be described as a *turpi causa*.
- [58] The respondent submitted that no breach of the agreement could have occurred while the matter was the subject of appeal proceedings. The Supreme Court of Appeal however already dismissed the application for leave to appeal on 25 August 2023, and the respondent has presented no

¹³ *Lazarus Estates v Beasley* [1956] QB 702 (CA) at 712.

¹⁴ See for example: *Gilbey Distillers & Vintners (Pty) Ltd v Morris* NO 1990(2) SA 217 (SE) at 225 I/J - 226A-B.

evidence that he made payment in terms of the settlement agreement before or after it was made an order of court.¹⁵

[59] The present application was only issued on 1 December 2023, well after any suspension in terms of section 18 had ceased to operate. At that stage he was in default.

[60] Even if I am wrong in finding that the warrant was issued on a date when a suspension was in operation, it still cannot be said that such conduct would have amounted to a breach of the agreement. Paragraph 4.4 of the settlement agreement, which has the status of a court order, itself provides for the issuing of a warrant in the event of a breach of the terms of the agreement in any way. In my view the warrant was issued in terms of the court order, and not in breach thereof.

[61] The respondent further submitted in argument that the settlement order only authorised and permitted the applicant to issue a warrant of execution in the event of a breach by the respondent, not a warrant for delivery of the vehicle. Even if the effect of paragraph 4.4 of the settlement order was that a warrant for delivery could not have been issued in terms thereof, it was evidently never carried through as the respondent remained in possession. It therefore had no real effect.

[62] The respondent also contended that the applicant would only be entitled to issue a warrant of delivery after it had approached the court for the orders in paragraphs A – E of the settlement agreement (referred to above) and the court had granted such orders. The very reason for the present application is to obtain such an order, for delivery, and if an order is granted, this objection will fall away.

[63] The respondent's submission that the warrant was issued in breach of the settlement order must also be rejected as the facts do not support such a

¹⁵ In terms of paragraph 2.1 of the settlement agreement the first monthly payment was already due on 30 September 2021.

breach, for reasons set out above. Even if it did, the effect of the breach was never clearly set out by him. The settlement order remains an order of court and must be complied with and enforced, unless and until it is set aside. The respondent's remedy in the event of a warrant being incorrectly issued or executed was to take steps to have it set aside. There is no indication on the papers that the respondent applied to set aside the warrant, to amend the order, or to prevent its execution by way of an interdict. It would in any event have been unnecessary, as the Sheriff was recalled. It is common cause that the vehicle was not removed by the Sheriff, and the respondent remains in possession thereof, despite a failure to comply with the terms of the settlement order since September 2021.

[64] The respondent's contention that the warrant could only have been issued after an order was granted for the cancellation of the credit agreement, is to be rejected for the same reasons as set out above. Even if this was correct, and the warrant for delivery of the vehicle could not have been issued before an order for cancellation of the credit agreement was granted¹⁶, it still does not provide the respondent at present with a defence against the enforcement of the settlement order. He consented to judgment in terms thereof. The existence of a warrant would not prevent the granting of relief to the applicant in terms of the settlement order, for the delivery of the vehicle and the other relief claimed. If this argument is correct, then on his own version, once cancellation of the credit agreement is ordered, a warrant for the delivery of the vehicle can be issued.

[65] Counsel for the applicant suggested that, insofar as the warrant was issued without the claimant having had the right thereto, an order can be made to set it aside, before the relief in this application be granted, which could clarify the position regarding such order.

[66] The respondent also contended in argument that the applications for leave to appeal did not only suspend the execution of the order in terms of which

¹⁶ Claimed in prayer 1 of the application.

the settlement agreement was made an order of court, but that the period of the appeal should also be taken into account as a period which extended the respondent's obligation to make payment. Put differently, he contends that, as the application for leave to appeal suspended the operation and execution of the order for a period, he had the opportunity to make payment for an amount of time after the application for leave to appeal was dismissed. He also argues that, as the agreement of settlement provides for 5 months monthly payments to be made, he again had a similar time to make payment after the final dismissal of the application for leave to appeal by the Supreme Court of Appeal on 25 August 2023. He therefore contends that the application was premature when it was made on 1 December 2023. These contentions are not in the answering affidavit, and were raised for the first time in argument.

[67] There is nothing in the settlement agreement nor in the order of Vermeulen AJ, nor in section 18, that provides for a dispensation that, after the suspension has terminated, the period of payment as set out in the settlement order would start running afresh and respondent would have a period of 5 months to perform or rectify his default. In terms of the settlement agreement the respondent was obliged to make payment of five equal monthly payments of R 292 393.29, *"with the first payment being due and payable on or before 30 September 2021 and thereafter on or before the first day of each month until the full outstanding balance and legal costs have been settled in full"*. When the settlement agreement was made an order of court it changed the status of the settlement agreement to a court order, but no new payment date was ordered. The respondent remained in default of the agreement, despite the suspension of the execution of the order in terms of the settlement agreement. If he had made payments after the order of Vermeulen AJ was made on 3 March 2023, one surely would have expected him to have relied thereon. He did not.

[68] Even if I am wrong in this regard, and the period for payment is taken to have only started to run from the date when the last suspension terminated (25 August 2023 when the Supreme Court of Appeal refused leave to

appeal), he would already have been obliged to make three monthly payments by the time that the application was issued on 1 December 2023.

[69] His contentions regarding such extensions have no basis in fact nor in law and must also be rejected.

[70] I therefore find that an analysis of the aforesaid shows that none of the aforesaid contentions by the respondent provide valid grounds on which the relief claimed can be prevented.

THE FORM OF THE APPLICATION

[71] What remains to be considered is whether the fact that the application professes to be an application for default judgment in terms of rule 31(5)(a), and was made in such form, prevent the granting of relief in terms of the settlement order.

[72] At the hearing of this application the court raised the question whether an application in terms of Rule 31(5)(a) was the appropriate procedure in this matter, as Rule 31(5)(a) is applicable whenever a respondent is in default of the delivery of a notice of intention to defend or of a plea, which are circumstances which do not apply *in casu*.

[73] Counsel for the applicant contended that although the application was couched in the form of an application by default in terms of Rule 31(5)(a), it appears therefrom that the real nature and reason for the application is an application to enforce the terms of the settlement which was made a court order. He submitted that the Court could grant judgment as prayed for despite the form in which the application was couched. He submitted that the settlement order is enforceable, in the total absence of a denial by the respondent that he failed to make the required payments in terms thereof. He relied thereon that the respondent unequivocally consented to judgement (as is evident from paragraph 4.4 of the settlement order), and as the

settlement was made an order of court, the applicant is entitled to the relief claimed.

[74] In respect of the process followed in the application, the respondent submitted that the applicant followed the wrong procedure and that the Court consequently cannot grant judgment by reason thereof.

[75] As a starting point, the Constitution, Act 108 of 1996, calls upon all parties to obey court orders. Section 165(5) of the Constitution directs that an order for a decision issued by a court is binding on all persons to whom it applies.¹⁷

[76] In **Standard Bank of South Africa Limited v Pylon Trading Close Corporation**¹⁸ 2024 (JDR) 1232 (SCA) at para [23] the following was stated in respect of a consent order:

“The consent order, which embodied the settlement agreement, had to be enforced if it was not set aside. No application was launched to rescind or appeal the consent order. Nor was it abandoned. It was of full force and effect. As such, the High Court was not entitled to ignore it and to enter the terrain of the previous lis between the parties. The Court had no jurisdiction to do anything other than give effect to the consent order. The only additional information required was whether or not the amount of R18 million had been paid timeously or not. That undisputed information was before it. In the circumstances, it was obliged to make the final order sought by the bank.”

[77] In my view the form of the application, and the fact that it may have been made in terms of an incorrect rule, does not stand in the way of an order, as all the information that is required for judgement is before the court, as appears from the applicant’s attorney’s affidavit in the application, which confirms the undisputed failure by the respondent to make the required payments in terms of the settlement order. Following the aforesaid approach

¹⁷ S B Guarantee Company (RF) (Pty) Ltd v Manyoni & Gija Investments CC and Another 2024 (JDR) 3930 (FB) at para [17])

¹⁸ 2024 JDR 1232 (SCA) at paragraph [23]

in **Pylon**, this court is therefore bound to give effect to the settlement order, and to grant judgement in terms thereof, to which the respondent has already consented.

[78] If I am wrong in the aforesaid approach, I am of the view that any non-compliance with the rules should be condoned, and that the reference in the application to rule 31(5) (a) and the form of the application is not fatal to the granting of the relief set out therein, for the reasons that follow.

[79] As the respondent has failed to present any valid reason or defence why such an order should not be granted, if relief is refused on the basis of the form of the application, it will be a refusal on technical grounds alone, despite the existence of a court order.

[80] It has been confirmed in various decisions that a court should not be diverted by technicalities from its task of adjudicating the real issues between the parties, that the rules of civil procedure exist in order for the court to do justice, and that a court will condone irregularities where it has a discretion to do so in the interest of justice.¹⁹

[81] In **Trans- African Insurance Co Ltd v Maluleka**²⁰ it was for example held that:

“technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possibly inexpensive decision of cases on their real merits.”

[82] Similarly, in **Federated Trust Ltd v Botha**²¹ it was held:

¹⁹ See for example: *Dawood v Mahomed* 1979 (2) SA 361 (D) at 365 H to 365 *In fine*; *Massey Ferguson* above, at 214 G/H- H; *Vivian and others v Absa Bank* and another 2014 JDR 2983 (GP) at paragraphs [3]–[4]; *Khunou and Others v M Fihrer & Son (Pty) Ltd and others* 1982 (3) SA 353 (w) at 355 G-H; *Prudential Assurance Co Ltd v Crombie* 1957 (4) SA 699 (C) at 702 D-F.; *Shephard v Tuckers Land and Development Corporation (Pty) Ltd* (1) 1978 (1) SA 173 (W) at 180 H-180 *in fine*.

²⁰ 1965 (2) SA 273 (A) at 278E-F/H.

²¹ 1978 (3) SA 645 (A) AT 654 D

“The court does not encourage formalism in the application of the Rules. The rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts”

[83] In the present application, the real issue is whether the applicant is entitled to the relief claimed based on the respondent’s default in failing to comply with his payment obligations in terms of the settlement order. It is not whether he is in default as contemplated in terms of rule 31(5)(a). This is clear from the application papers. The fact that the attorney relied on the incorrect rule, does not detract from this.

[84] In **Eke v Parsons**²² the Constitutional Court, per Madlanga J, dealing with circumstances where it was contended that the re-enrolment of a summary judgment application, a second summary judgment application, was legally incompetent, stated²³:

“[39] ...Without doubt, rules governing the court process cannot be disregarded. They serve an undeniably important purpose. That, however, does not mean that courts should be detained by the rules to a point where they are hamstrung in the performance of the core function of dispensing justice. Put differently, rules should not be observed for their own sake. Where the interests of justice so dictate, courts may depart from a strict observance of the rules. That, even where one of the litigants is insistent that there be adherence to the rules. Not surprisingly, courts have often said ‘(i)t is trite that the rules exist for the courts, and not the courts for the rules.’

[40] Under our constitutional dispensation the object of court rules is twofold. The first is to ensure a fair trial or hearing. The second is to ‘secure the inexpensive and expeditious completion of litigation

²² Above, at paragraphs [39] – [42].

²³ 2016 (3) SA 37 CC at 53 paragraphs [39] – [42]

and ...to further the administration of justice. I have already touched on the inherent jurisdiction vested in the superior courts in South Africa. In terms of this power the High Court has always been able to regulate its own proceedings for a number of reasons, including catering for circumstances not adequately covered by the Uniform Rules, and generally ensuring the efficient administration of the courts' judicial functions.

[41] *Where the parties themselves, through a settlement agreement, reached with legal representatives present on each side, prefer to dispense with the strictures of a rule and request that the court recognise the preference by means of a consent order, for one party suddenly to perform a volte-face and demand strict adherence with the selfsame rule borders on the ludicrous. Justice between the two litigants demands that their settlement agreement, which was made an order of court, must be given effect. After all, a court's duty is to do justice between litigants, In this instance justice demands that Mr Eke be held to his bargain.*

[42] *In the circumstances of this case, it matters not that rule 32 does not provide for the enrolment of a second summary judgment application. Mr Eke's contentions in this regard cannot succeed. Substance must be placed ahead of form"*

[85] Similar considerations apply *in casu*. Placing substance over form in the present matter, would in the first place entail recognising the real grounds and nature of the application, and to adjudicate the application on the real factual basis thereof as set out in the notice of motion and in the attorney's affidavits in support of the application, rather than based on the name given to the procedure by the applicant's attorney. It would also entail that less than imperfect procedure be condoned, in the interest of dispensing justice, and bearing in mind the considerations expressed by the Constitutional Court in **Eke v Parsons**.

- [86] Courts have an discretion in terms of Rule 27(3) to condone non-compliance with the rules where good cause is shown. In **Mynhardt v Mynhardt**²⁴ it was held:

“Benewens die bevoegdheid wat die Hof ingevolge reël 27(3) het om enige nie-nakoming van die Reëls te kondoneer, kan hy myns insiens op sterkte van sy inherente bevoegdheid kondonasie verleen, mits geen belanghebbende persoon daardeur benadeel word nie.”

- [87] With reference to **Mynhardt v Mynhardt, Erasmus**²⁵ describes the position in respect of Rule 27(3) and the court’s inherent discretion as follows:

*“The subrule empowers the Court to condone ‘any non-compliance with the rules, and the use of the word ‘any’ emphasizes the absence of any restriction on the powers of the court to do so. There must, obviously, be something to be condoned, an objective manifestation of an intention on the part of a litigant to cause a summons to be issued or to file a pleading or to take some other step in terms of the rules. Once there is such an act or objective manifestation of an intention, any non-compliance with the rules, however serious, can be condoned under the subrule. In other words, by virtue of this subrule none of the provisions is peremptory.”*²⁶

- [88] Insofar as the court has a discretion to condone non-compliance with the rules, it also has a discretion to waive compliance therewith²⁷.

- [89] In **Chopra v Sparks Cinemas (Pty) Ltd**²⁸ it was held that as none of the provisions of the Rules is peremptory by virtue of rule 27(3), substantial compliance of a particular provision would therefore be a sufficient basis for condonation.

²⁴ 1986(1) SA 456 at 463G-464B

²⁵ Erasmus, Superior Court Practice (Second Edition), at D1 Rule 27-9.

²⁶ See also Chasen v Ritter 1992 (4) SA 323 (SE) at 328G - 329 F-I.

²⁷ Brumloop v Brumloop 1972 (1) SA 503(O) at 504F.

²⁸ 1973 (2) SA 352 (D) at 357B.

- [90] In **Mynhardt v Mynhardt**²⁹ it was recognised that the non-compliance with the rules by making an application in the wrong form could be condoned. Our courts will however only dispense with strict compliance where there is no prejudice.³⁰
- [91] I am satisfied that the respondent was not be prejudiced by the procedure followed in this application. The respondent is an attorney, and it can be assumed that he is *au fait* with his rights in terms of the court rules. In view of his prior applications for leave to appeal regarding the settlement order, he must be fully aware of its contents, and of his obligations in terms thereof. This includes his obligation to make payment to the applicant as set out therein.
- [92] It appears from the papers filed on Caselines that the respondent already filed a notice of intention to oppose the application, dated 16 May 2024. He filed an answering affidavit dated 24 May 2024, which was uploaded on Caselines on 3 June 2024, raising the various defences mentioned above. He subsequently filed heads of argument dated 30 April 2025, and he presented argument at the hearing. He therefore had ample opportunity to consider and deal with the averments in the applicant's application. He did not rely on a lack of a proper opportunity to answer to the allegations therein.
- [93] He never complained about the procedure followed until after it was raised by the court. He never applied in terms of rule 30 to set the application aside as an irregular step based on an incorrect form or that it was incorrectly made in terms of the wrong subrule. It stands to reason, that if he considered that he was prejudiced by the procedure followed by the applicant, he would surely have raised it. In **Mynhardt v Mynhardt**³¹ the Court opined that if a party ignored the fact that a notice of motion was brought in the wrong form, and failed to take steps to set it aside in terms of rule 30, he could even be regarded to have waived his right to do so.

²⁹ Above, at 461H

³⁰ See also *Barclays Nasional Bank Bpk v Badenhorst* 1973 (1) SA 333 (N) at 341 C-G.

³¹ Above, at 461C

- [94] It is not necessary to decide in this application whether a waiver occurred or not, but the fact that the respondent only raised the procedure followed in argument after it was raised by the court, illustrates that he evidently did not regard the incorrect procedure as prejudicial.
- [95] It is clear from the application that the applicant seeks the enforcement of the settlement order. Although the respondent's defences were found to be unmeritorious, he was not prevented from raising same. He clearly considered the applicant's application, placed his defences on record in his answering affidavit, and in argument. Although he clearly had the opportunity to do so, he did not dispute the allegations that he failed to make the required payments as per the settlement order.
- [96] In view of the principles and considerations mentioned in **Eke v Parsons**, I consider that justice will not be served if the application is dismissed merely because it refers to an incorrect rule. In the absence of a valid defence, and as the respondent's failure to comply with the settlement order was not disputed, dismissing the application because the incorrect subrule was followed would not be in the interest of justice. To dismiss the application on such technical basis would invariably just cause that the applicant will again have to proceed with a similar application, based on the same breach and respondent's non-compliance with the settlement order, where to the respondent will again have no defence. This will cause unnecessary costs and delays. The applicant has already been waiting for payment in terms of the settlement agreement since 30 September 2021, and the respondent remains in possession of the vehicle. In my view relief that the applicant is entitled to, should not further be frustrated by reason the applicant's attorney's reliance on an incorrect subrule.
- [97] With regards to the content and format of the application as set out above, I have considered which procedure would have been the correct procedure to obtain judgment in terms of the settlement order, so as to assess to what extent the form of the application as it was made, deviated therefrom. I am

of the view that the application substantially complies with procedure which could have been followed.

[98] Rule 31(1) provides for a procedure whereby a defendant could at any time confess in whole or in part the claim contained in the summons. Such rule could have been used. It provides:

“(1) (a) Save in actions for relief in terms of the Divorce Act, 179 (Act 70 of 1979), or nullity of marriage, a defendant may at any time confess in whole or in part the claim contained in the summons.

(b) The confession referred to in paragraph (a) shall be signed by the defendant personally and the defendant’s signature shall either be witnessed by an attorney acting for the defendant, not being an attorney acting for the plaintiff, or shall be verified by affidavit.

(c) Such confession shall be furnished to the plaintiff, whereupon the plaintiff may apply in writing through the registrar to a judge for judgment according to such confession”.

[99] It is common cause that the agreement was signed by the respondent, which is evident from the judgment of Vermeulen AJ³². In **Erasmus, Superior Court Practice**³³ it is explained that the “*confession*” referred to in Rule 31(1) is what is generally known as ‘consent to judgment’. The settlement agreement *in casu* indeed contains a confession in that the respondent acknowledged to be indebted to the applicant, and he consented to a judgement for the relief as claimed by the applicant, should he breach the settlement, in terms of paragraph 4.2 of the settlement order.

[100] In **Changing Tides 17 (Pty) Ltd v Mieke and Another**³⁴ the parties had entered into a settlement agreement, in terms whereof the defendants

³² Paragraph [4.4] of the judgment of Vermeulen AJ dated 3 March 2023 [Caselines 36-3]. In paragraph 13 of the respondent’s application for leave to appeal to the Supreme Court of Appeal [Caselines 10-8], the respondent also stated under oath that “*the settlement agreement was reached and signed between the applicant (a reference to himself) and the respondent.*”

³³ Above, at D1 Rule 31-6.

³⁴ 2020 (5) SA 146 (KZP) at paragraph [7].

confessed to judgment and agreed upon a revised payment schedule. The following was said in respect of Rule 31(1):

“While rule 31(1) does not provide for an affidavit in support of the request for judgment upon confession, a sound practice has evolved in terms of which the plaintiff’s attorney usually files an accompanying affidavit recording the failure of the respondent to adhere to the settlement arrangement which gave rise to the confession to judgment being submitted to court”.

[101] An application in terms of this subrule is akin to an *ex parte* application, and can be made without notice to the respondent, but the material facts however have to be disclosed.³⁵

[102] In my view, save for the references therein to default judgment in terms of the incorrect rule, the present application in its present form substantially complies with rule 31(1)(c); it would have complied with rule 31(1) was it not for the references to rule 31(5)(a). The material facts that the applicant relies on are clearly set out. The application was supported by an affidavit, which sets out the relief claimed. The application substantially complies with the requirements of rule 31(1).

[103] The first application in terms of the settlement agreement (to obtain the order of 3 March 2025 in terms of which it was made an order of court), was made substantially in accordance with Form 2 of the First Schedule to the Uniform Rules of Court, which Vermeulen AJ and the Supreme Court of Appeal evidently found in order. The notice of motion in the present application also substantially accords with Form 2, save for not mentioning the date of hearing (it just gives notice that application will be made), and not specifically referring to the affidavits that were filed therewith.

[104] Rule 41(4) could arguably also have been used. It provides that, unless the proceedings in respect of which a settlement had been reached have been

³⁵ Erasmus, above at D1 Rule 31-7.

withdrawn, any party to a written settlement which has been reduced to writing and signed by the parties or their legal representatives but which has not been carried out, may apply for judgement in terms of the settlement on at least five days' notice to all interested parties.

[105] The settlement agreement has not been carried out in full, the respondent was given more than 5 days' notice of the application, and the applicant is entitled to claim judgement due to the respondent's breach. In these respects, the application complies with Rule 41(4). Such application can be brought under Rule 6(1).³⁶ Rule 6(1) provides that every application must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

[106] The present application does comply with rule 6(1) insofar as the application was brought on notice of motion supported by affidavits as to the facts upon which the applicant relies for relief. The respondent was also notified thereof, as is evident from his reaction thereto. It does not comply with Forms 2 or 2(a) of the *First Schedule* insofar as it does not set out what the respondent was to do after receipt of the application, nor the time periods. I consider however that the provisions of Rule 41(4) and Rule 6(1) have substantially been complied with.

[107] In **Massey Ferguson (South Africa) Ltd v Ermelo Motors Ltd** ³⁷ the applicant made application in terms of Rules 6(11) and 41(4) for judgment pursuant to the respondent's non-compliance with its payment obligations in terms of an agreement of settlement. The document in which the settlement was contained provided that, in the event of default, the applicant had a right to pursue the action. On the facts of the matter the court found that the application was not incidental to the pending proceedings in the sense contemplated in Rule 6(11) because it was not subordinate or accessory to while being at the same time distinct from the main proceedings. The court however still found:

³⁶ Massey-Ferguson (South Africa) v Ermelo Motors (Pty) Ltd 1973 (4) SA 206(t) AT 214C-H.

³⁷ 1973(4) Sa 206 (T) at 214C-H

“but a reference in the notice of motion to the wrong subrule does not vitiate the entire proceedings if the correct procedure has substantially been followed.”

[108] The court did not insist on strict compliance with the rules.

[109] Rule 6(11) provides:

“Notwithstanding the foregoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge”

[110] In the present matter the settlement order expressly provides that the applicant could “*apply*” for an order in the event of a breach by the respondent, unlike the settlement in **Massey-Ferguson** (which provided that the matter was to be referred back to action in the event of a default). I am therefore of the view that although the present application has the status of a court order as indicated, it is incidental to the settlement order, in that proceedings in terms thereof have not been finalised. and that application in terms of rule 6(11) could have been made. “Notice” in terms of this subrule does not mean a notice of motion³⁸. Was it not for the incorrect references in the notice of application and affidavit default judgement in terms of rule 31(5)(a), the application would have been in accordance with, or at least substantially in accordance with, and competent in terms of, rule 6(11).

[111] In conclusion I therefore find that condonation can also be granted as the applicant’s application substantially complied in form and process with procedures prescribed by one or more of the other rules referred to,

³⁸ Yorkshire Insurance Co Ltd v Reuben 1967 (2) SA 263E-H; 4 Africa Exchange (Pty) Ltd v Financial Sector Conduct Authority 2020 (6) SA 428 (GJ) at paragraph [8]; Viljoen v Federated Trust Ltd 1971 (1) SA 750 (O) at 755A-756C;

[112] Even if I am wrong in this regard, I still find that substance must be preferred over form in this case, in view of the absence of the absence of prejudice, the applicant's clear rights in terms of the settlement order, the absence of a defence on the merits, and with due regard to the principles set out in **Eke v Parsons**. In my view, to do otherwise in the circumstance of this case, will result in the application of the rules for their own sake, and will not further the interests of justice.

[113] In the circumstance I find that there exists good cause to grant condonation for the non-compliance of the application with applicable rules, and that this court should exercise its inherent discretion to condone non-compliance with the rules of court pertaining to the form and incorrect proceedings in the application. I condone it insofar as it may be required, but I remain of the view that condonation may well have been unnecessary, as this court is in any event compelled to enforce the settlement order, as indicated.

[114] For the sake of clarity and certainty as to the status of the warrant issued in 2023, I will set such warrant aside. Delivery of the vehicle is provided for in the Court order issued herewith.

[115] **I make an order in the following terms:**

115.1 The warrant of execution/delivery issued by the Applicant in June 2023 is set aside.

115.2 The cancellation of the credit agreement between the parties is confirmed.

115.3 The Sheriff of the High Court is authorised to attach, seize and hand over the vehicle, a 2016 Mercedes- Benz GLE 63 S AMG, Engine number:1[...], Chassis number: W[...] to the Applicant.

115.4 The applicant is given leave to approach the court on the same papers, as my be supplemented, for payment of the difference

between the balance outstanding and the market value of the vehicle in the event of there being a shortfall after the vehicle has been repossessed and sold or re-leased and there being a balance outstanding payable by the respondent to the applicant.

115.5 The respondent is ordered to pay the applicant's cost of the application, including the cost of counsel.

JS STONE

This judgment is handed down electronically by circulating it to the legal representative by email and being uploaded on Caselines. The deemed date for hand down is 28 July 2025.

Appearances:

Attorneys on behalf of the applicant: Hammond Pole Majola Inc.

Counsel on behalf of the Applicant: Adv J Minnaar

**Attorneys on behalf of the Respondent: Botha, Massy and
Thobejane Attorneys**

On behalf of the respondent: Mr L E Thobejane

Date of hearing: 5 May 2025

Date delivered: 25 July 2025

Date Revised: 28 July 2025