

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

Case 2024/131418

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED: Yes

7 August 2025

In the matter between:

J[...] V[...] N[...]

Plaintiff

and

S[...] S[...]

Defendant

JUDGMENT

DU PLESSIS J

[1] This is an unopposed divorce in which the plaintiff seeks an order to make a settlement agreement an order of the court. The defendant, acting in her personal capacity, filed a notice of intention to defend with a new proposed settlement agreement.

[2] Since the defendant seemed to be self-represented and living in London, I was initially reluctant to grant the order and invited counsel for the plaintiff to file

heads of argument to address the court's concerns. Counsel did so, for which I am grateful.

[3] The attorneys involved in the drafting of the settlement agreement also filed a supplementary affidavit to set out the circumstances surrounding the signing of the settlement agreement and subsequent communications. Having considered the supplementary affidavit and the heads of argument filed, I am satisfied that the settlement agreement may be made an order of court, for the reasons that follow.

[4] On 13 November 2024, the parties entered a deed of settlement to settle the divorce. The agreement included a clause expressly stating that the settlement agreement may be made an order of court. Attached to the supplementary affidavit is an indemnity confirming that the agreement was explained to both parties, and that they accepted its terms.

[5] On 5 March 2025, the defendant filed a notice of intention to defend and submitted a new proposed settlement agreement. The supplementary affidavit filed by the plaintiff's attorneys explains that the defendant is assisted by a divorce mediator who is not an admitted legal practitioner, but does have a legal background.

[6] No plea was filed. On 9 April 2025, the plaintiff filed a notice of bar, which expired without response. The defendant is therefore barred from pleading, and the only pleadings before the court remain the particulars of claim, which seek to make the settlement agreement an order of court.

[7] The supplementary affidavit further confirms that the notice of set down was properly served on both the defendant and the mediator assisting her. The mediator indicated that attorneys would be appointed to represent the defendant. However, no attorneys were appointed. There was further correspondence between the parties thereafter, wherein the attorneys indicated that the discussion does not affect the running of the matter that remains on the unopposed roll.

[8] No application was made to uplift the bar, and no appearance was entered on the date of hearing.

[9] I am accordingly satisfied that the plaintiff complied with all the procedures to set down the matter on the unopposed roll.

[10] Section 7(1) of the Divorce Act¹ stipulates that

"A court granting a decree of divorce may in accordance with a written agreement between the parties make an order with regard to the division of the assets of the parties or the payment of maintenance by the one party to the other".

[11] This section allows for settlement agreements regarding patrimonial consequences of a marriage to be made orders of court.

[12] Such agreements are governed by the law of contract and settlement. The court's power to make settlement agreements and order derives from the Constitution itself.²

[13] In *Eke v Parsons*³ and *Mafisa v Road Accident Fund*⁴ the Constitutional Court emphasised that a court is not obliged to accept, and make an order of the court, everything that the parties agreed to. In *Eke*, the court laid down three requirements that must be considered when making a settlement agreement an order of court. These requirements are:

1. They must relate directly or indirectly to the dispute between the parties;

¹ ???

² *South African Broadcasting Corporation Limited v National Director of Public Prosecutions* [2006] ZACC 14 para 88.

³ [2015] ZACC 30.

⁴ [2024] ZACC 4.

2. It must not be objectionable – it must accord with the Constitution and the law, and not be offensive to public policy; and
3. It must hold some practical and legitimate advantage.

[14] In *Mafisa*,⁵ the Constitutional Court reaffirmed that parties may enter into settlements or compromises to avoid litigation, and that such agreements give rise to contractual rights and obligations. Agreements freely and voluntarily entered into should, generally, be respected and enforced.⁶

[15] In *PL v YL*⁷ the court stated two basic requirements for making a settlement agreement an order of court in divorce proceedings:

“An overview of the reported decisions on the subject shows that there are two basic requirements that are to be met when the court considers a request to grant a judgment in accordance with the terms of a settlement agreement. The first is that the court must be satisfied that the parties to the agreement have freely and voluntarily concluded the agreement and that they are ad idem with regard to the terms thereof. As will be pointed out later in this judgment, the granting of an order in terms of s 7(1) of the Divorce Act holds certain consequences for the rights of the parties. To the first requirement must accordingly be added that the court must satisfy itself that the parties are in agreement that the terms of their settlement be made part of the order of the court. *The second requirement is that the order sought must be a competent and proper one to make in the circumstances.* The first requirement speaks for itself. It is the second requirement and in particular its content that is relevant to this appeal and the issue raised in the *Thutha* judgment. What it requires in the first place is that it must be competent for the court to make the settlement agreement an order. That is, it must relate directly or indirectly to an issue or *lis* between the parties that is properly

⁵ Para 33.

⁶ Para 36.

⁷ 2013 (6) SA 28 (ECGG).

before the court, and in respect whereof, but for the settlement agreement, it would possess the necessary jurisdiction to entertain it.”

[16] In this matter, I am satisfied that the settlement agreement was signed by both parties and is binding as between them. If made an order of court, it would be capable of enforcement. While the defendant later sought to depart from the agreement, her proposal was not accepted by the plaintiff. No plea was filed. After the expiry of the notice of bar, no application was made to uplift it. The defendant was aware of the proceedings, and aware of the set down.

[17] The matter is thus properly before the court as an unopposed divorce with a validly concluded settlement agreement. There is no indication that the agreement was not freely and voluntarily entered into. The court must adjudicate on the pleadings before it and, in this instance, those pleadings support the relief sought.⁸

Order

[18] Accordingly, the following order is made:

1. The marriage between the parties is dissolved;
2. The decree of divorce incorporating the settlement agreement marked “B”.

WJ du Plessis

Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing: 15 July 2025

Date of judgment: 7 August 2025

For the applicant: LF Taljaard appeared at the second appearance and submitted heads of argument, GS Moeletsi appeared at the

⁸ *PL v YL* 2013 (6) SA 28 (ECG).

first appearance. They were instructed by
Denga Incorporated.

For the respondent:

No appearance.