

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

CASE NO: 2020-40872

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE 03/09/25

SIGNATURE

In the matter between:-

Q[...] K[...] (Born H[...])

Applicant

and

M[...] K[...]

Respondent

JUDGMENT

Mfenyana J

[1] In this application, the applicant seeks an order compelling the respondent to make proper financial disclosure in compliance with the Practice Directive of the Judge President of this Division issued on 12 June 2024. The applicant further seeks an order directing the respondent to pay the costs of this application on attorney and client scale.

[2] The respondent is opposing the application.

[3] The parties, who are married to each other out of community of property, excluding accrual, are entangled in divorce proceedings pending before this

court. Two children were born of the marriage, who are still minors. The summons was issued on 27 November 2020. On 29 April 2021, the defendant delivered his notice of intention to defend and his plea on 19 May 2021. Thereafter, the parties exchanged discoveries, the last of which was the plaintiff's discovery, delivered on 4 August 2023.

- [4] On 23 November 2023, the applicant signed a settlement agreement, disposing of the litigation between the parties. The respondent signed the settlement agreement on 5 December 2023. Thereafter, the applicant's attorneys at the time applied for a hearing date on the unopposed motion roll.
- [5] On 5 July 2024, the applicant, through her new attorneys of record, sent a request to the respondent's attorneys for the respondent to deliver his Financial Disclosure Form (FDF), ostensibly, as envisaged in the Judge President's Directive. This was followed by another similar request on 11 July 2024. Having not received the FDF as requested, the applicant sent another request on 19 July 2024, this time advising that she would proceed with an application to compel, should the respondent fail to furnish his FDF. To date, the respondent has not furnished his FDF. The applicant contends that she is prejudiced by the respondent's non-compliance, as she is unable to proceed with litigation.
- [6] In opposing the application, the respondent avers that the FDF is not necessary as the parties have settled their disputes and signed a settlement agreement. He further contends that the applicant's reliance on the Practice Directive is misplaced, as the applicant sent different requests from two sets of attorneys, and as such, the respondent could not be expected to entertain all these requests. The respondent further avers that the applicant's current attorneys only formally placed themselves on record on 10 September 2024 after the requests were made by the applicant's previous attorneys. He further contends that the applicant's current attorneys failed to disclose to his attorneys what their involvement in the matter was, and given his right to privacy, he instructed his attorneys not to furnish his FDF.

- [7] It is further the respondent's contention that the applicant's requests are not in accordance with the rules of court, as the applicant's current attorneys were not yet on record. As such, there is no justification for the present application. Importantly, the respondent notes that the relevant provision of the Practice Directives only requires financial disclosure forms in the event of a dispute between the parties.
- [8] Finally, the respondent contends that the application is an abuse of the process of the court, exacerbated by the fact that the applicant herself has not furnished her FDF.
- [9] In reply, the applicant concedes that her erstwhile attorneys did not deliver a notice of withdrawal and did not provide her with feedback on the matter. As such, they failed to act in the best interests of the minor children. The applicant, however, avers that her current attorneys delivered the relevant notices. In this regard, it is worth stating that the record indicates that the applicant's current attorneys delivered a notice of substitution on 10 September 2024.
- [10] Regarding the settlement of the matter, the applicant denies that the matter became settled. She, however, concedes that she signed the settlement agreement on the advice of her previous attorneys, even though no FDF had been furnished by the respondent. According to the applicant, the signing of a settlement agreement does not mean that the dispute between the parties has become settled.
- [11] The applicant further notes that in terms of the signed settlement agreement, the respondent is to pay R8 100.00 towards the maintenance of both minor children. However, the respondent lives a luxurious life and is therefore in a position to contribute more towards the maintenance of the minor children, she further avers. On that basis, she now disputes the maintenance amount she previously agreed to. It is also for this reason that the applicant avers that

a dispute exists in relation to the maintenance of the minor children, which entitles her to the relief she seeks.

- [12] Interestingly, the applicant concedes that she has not furnished an FDF which she avers she had completed with her previous attorneys who failed to serve them on the respondent's attorneys. She offers to complete a new FDF as she states the previous one may be out of date.
- [13] The footnote to paragraph 29.4.7 of the 2024 Practice Directives (Revised Consolidated Practice Directive 1 of 2024) provides that an FDF must be completed by each party under oath, together with supporting documentation referred to in the FDF and must be exchanged in every opposed action and in every rule 43 matter in which maintenance is in dispute. The Practice Directive further stipulates that the FDF must be exchanged no later than 10 days after the plea is uploaded.
- [14] There is no dispute that the parties have signed a settlement agreement in which they settled the issues between them, including parental rights and responsibilities to the minor children, contact, maintenance, medical aid and movable property. It further records that either party may apply to the maintenance court to vary the maintenance amount. The applicant does not say that she no longer wishes to be bound by the settlement agreement, and if so what aspects of the settlement agreement she no longer wants to pursue.
- [15] In the heads of argument, it is submitted that without the FDF, the court is not in a position to make a fair and just finding regarding the best interests of the minor children and would merely rubber-stamp the settlement agreement concluded by the parties. The applicant asserts that the respondent is obliged to comply with the Rules and practice directives. She relies on the decisions in *N.Z.M¹ v Road Accident Fund* and *ABSA Bank v The Farm Klippan 490 CC²* for this proposition. While true of the principle they assert, these decisions do

¹ (13281/2020) [2024] ZAGPPHC 444 (16 May 2024).

² 2000 (2) SA 211 (W).

not take the applicant's case much further. The fact is that, just as the respondent is obliged to comply with the Rules and Practice Directives, so is the applicant.

- [16] The respondent, on the other hand, submits that following the signing of the settlement by the applicant, he proceeded to sign the settlement agreement on 5 December 2023. Thereafter, on 11 March 2024, the applicant's erstwhile attorneys applied for a date for the hearing of the matter on the unopposed roll. The respondent contends that the purpose of filing financial disclosure forms as envisaged in *E v E and related matters*³ is to enable the court to make a proper determination in rule 43 applications. In those circumstances, the court would have all the facts before it, which may be material in determining the dispute between the parties. The respondent disputes the applicant's submission that a settlement agreement does not mean that there is no longer a dispute.
- [17] The question is whether a settlement agreement settles the disputes between the parties. The answer is 'yes'. I agree with Ms Patel that the conclusion of a settlement agreement means exactly that: that the parties have reached agreement on disputes between them. By affixing her signature, the applicant bound herself to the terms of the settlement agreement. There are a number of reasons for this position.
- [18] In *Barkhuizen v Napier*⁴, the Constitutional Court noted that the principle of *pacta sunt servanda* plays a huge role in the exercise of the court's discretion in making settlement agreements orders of court. Thus, signatories to settlement agreements are expected to honour their contractual agreements. It is therefore not correct, as the applicant suggests, that concluding a settlement agreement does not indicate that the matter is settled. A settlement agreement is a recordal of the resolution of a dispute. Once signed, the parties are legally bound by its terms. The fact that the settlement has not

³ 2019 (5) SA 565 (GJ).

⁴ 2007 (5) SA 323 (CC).

been made an order of court does not render it *pro non scripto*. It remains binding as between the parties. That the applicant has had a change of heart, is also of no moment.

[19] In *MB v RB*⁵, the Supreme Court of Appeal found that dissatisfaction or a unilateral error is not sufficient ground for the variation of a settlement agreement (which had been made an order of court). In *T.R v Z.D.R*⁶, the court dismissed an application in which the applicant sought an order rescinding and setting aside a settlement agreement on the basis that she was induced by misrepresentation, dishonest and fraudulent conduct. In that matter, the court also dismissed the application for leave to appeal.

[20] There is clearly no pending dispute between the parties. What the applicant seeks to do is to reopen the litigation, in circumstances where there is a valid settlement agreement concluded between the parties. I do not understand the applicant to be saying that she seeks an order varying the terms of the settlement agreement and the reasons therefor. What she says is that she wants to make up her mind all over again and requires the respondent's FDF to do so.

[21] I do not understand the applicant to be saying that she was induced by some or other factor in signing the agreement. Even if that were the case, the applicant does not concern herself with the status of the settlement agreement, only that she should be allowed to peek into the respondent's financial affairs and decide what course to take, in the hope that a dispute might arise once she has sight of the FDF. All this because, according to the applicant, the respondent seems to be living at the lap of luxury. This is pure speculation.

[22] The applicant's submission that this is to compel compliance with the practice directives is simply a ruse. As the respondent correctly points out, the

⁵ (259/2023) [2024] ZASCA 116 (24 July 2024) (unreported).

⁶ *T.R v Z.D.R and Others* (93454/2015) [2024] ZAGPPHC 1343 (20 December 2024).

exchange of FDFs as envisaged by the Practice Directives is only required where there is a dispute. There is no live dispute in this matter. Besides, the applicant has herself not complied with the very same requirement she seeks the respondent to comply with. It makes no difference that the applicant belatedly offers to provide an FDF. Interestingly, the applicant does not state what dispute remains, save to state that the filing of the FDF is in the best interests of the minor children.

- [23] As regards the applicant's submission that the court is not there to rubber-stamp settlement agreements, the judgments of the Constitutional Court in *Mafisa*⁷ and the Supreme Court of Appeal in *Taylor*⁸, serve as authority that a court will not interfere with the terms of a settlement agreement in the absence of concerns of the nature contemplated in *Eke*⁹, that the agreement must be competent and proper and relate directly or indirectly to the *lis* between the parties. This is not the same as saying that courts merely rubber-stamp decisions. It is also not the applicant's case that the settlement agreement she entered into does not meet legal standards. Nothing prohibits the applicant from approaching the maintenance court should the maintenance amount she agreed to not be adequate. This is any event, catered for in the settlement agreement. In the circumstances, the application falls to be dismissed.

Order

- [24] In the result, I make the following order:

- a. The application is dismissed with costs

⁷ *Mafisa v Road Accident Fund and Another* [2024] ZACC 4.

⁸ *The Road Accident Fund v Taylor and other matters* (1136-1140/2021) [2023] ZASCA 64 (8 May 2023).

⁹ *Eke v Parsons* (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015).

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JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the applicant : Adv X van Niekerk instructed by Waldick Inc.
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Date of hearing : 05 March 2025

Date of judgment. : 03 September 2025