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

CASE NO: A2024/042817

DOH: 31 JULY 2025

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED.

In the matter between:

M[...] L[...] D[...] T[...]

APPELLANT

And

G[...] J[...] D[...] T[...]

1ST RESPONDENT

**THE DEPUTY SHERIFF OF THE
REGIONAL COURT, BENONI
RESPONDENT**

2ND

In Re the matter between:

G[...] J[...] D[...] T[...]

APPLICANT

And

M[...] L[...] D[...] T[...]

1ST RESPONDENT

THE DEPUTY SHERIFF OF THE

REGIONAL COURT, BENONI

2ND RESPONDENT

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand down is deemed to be on **19 September 2025**

JUDGMENT

MALI J

Et

NKOENYANE AJ

Introduction

- [1] This is an appeal against the entire judgment and order of the Regional Court, Benoni granted on 22 March 2024, setting aside the warrant of execution (warrant) issued on 17 January 2022, in terms of section 62 of the Magistrate court Act 32 of 1944.
- [2] There is no relief sought against the second respondent, the Deputy Sheriff, Benoni. It is common cause that the appeal was not prosecuted timeously. The appellant had filed application for condonation for the late filing. The first respondent agreed to abide by the decision of the court. In the interests of justice, condonation for the late filing of the appeal was granted.

[3] Brief facts are that the appellant and respondent were married to each other, out of community of property with accrual. They divorced on 28 October 2020. They entered into a settlement agreement (agreement) which was later incorporated and made an order of court.

[4] The crux of the agreement is the determination of the accrual liability and amount. The relevant clauses of the agreement are as follows:

“[8] The parties further agree that each party will appoint their own chartered accountant to determine each party’s accrual, calculated until date of divorce. Such appointments would be done on each party’s own costs.

[9]The parties further agree their appointed chartered accountant would take into account and determine the following property which may include but is not limited to the value of shares of either in any business, bank accounts, values, values of movable property and/or the existence and/or value of any other movable or immovable properties in either party’s name.

[10] The parties agree that they will make any documentation available which may be relevant in respect of the abovementioned valuations and the determination, upon request of either party.

[11] The parties agree that each chartered accountant will deliver a report to all parties within a reasonable time after appointment, whereafter a joint meeting may be held between the chartered accountants and the parties in order to arrive at a consensus.

[12] Should this not be achieved, within 14 (fourteen) days thereafter the chairperson of the Independent Regulatory Board of Auditors is to appoint a person who would act as an arbitrator to settle any disputes between the parties, and costs will be shared equally between the parties.”

[5] It is not in dispute that the respondent did not comply with these clauses as he did not appoint a chartered accountant to evaluate the accrual of his estate. Whereas the appellant complied by appointing chartered

accountant and relevant experts in accordance with the clauses of the agreement. Furthermore, the appellant's attorneys communicated with the respondent alerting him of the steps taken by the appellant. The respondent was also requested to submit his own reports which request he ignored for a long period of time. Further attempts made by the respondent's attorneys to invite him to a meeting were unsuccessful. The respondent had indicated that he was engaged in some other matters and never followed up on his obligation in accordance with the settlement agreement.

- [6] In the meeting the respondent failed to attend, the experts made a determination and arrived at the figure of R618 009 .50, being the amount due by the respondent to the appellant. The appellant obtained a warrant depicting the amount as above, for which the attachment was later made in the respondent's bank account.
- [7] The respondent challenged the issuing of the warrant by the Assistant Registrar in the court *a quo*. The respondent's argument in court *a quo* is that the appellant had no valid court order, because there is no judgment liability which is specifically set out and describes the debt or other obligation of the judgment debtor, which is to be enforced by the sheriff.
- [8] Furthermore, the respondent decries the non- appointment of the arbitrator. This is based on the fact that the settlement agreement did not fully resolve the dispute as to the value of the accrual.
- [9] The appellant contends that she complied with all the obligations under the contentious clauses. The accrual was accordingly properly computed, and the warrant was lawfully issued.
- [10] The question before the court *a quo* was whether the appellant complied with all the legal requirements in obtaining the writ/warrant of execution.
- [11] Section 62 of the Magistrate Court Act 32 of 1944 provides:

“(1) Any Court which has jurisdiction to try an action shall have jurisdiction to issue against any party thereto any form of process in execution of its judgment in such action.

(2). A Court (in this subsection called second court), other than the court which gave judgment in an action, shall have jurisdiction on good cause shown to stay any warrant of execution or arrest issued by another Court against a party who is subject to the jurisdiction of the second court.

(3) Any Court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by itself, including an order under section seventy-two.”

[12] The court *a quo* reasoned that the clauses relied upon by the appellant did not have a definitive amount to be attached but based on the calculations of the appellant’s legal experts and chartered account reached is not reflected in the settlement agreement. It is further stated that the settlement agreement provided that in the event that the parties’ chartered accountants fail to agree, the matter was to be referred for Arbitration for final adjudication. It cannot be said from the settlement agreement that the court ordered determinable amount. At most the applicant could have been held in contempt as he failed to appoint chartered accountants to assist him as the respondent obliged.

[13] Other aspects of the court *a quo*’s judgment are as follows:

“The Applicant in his arguments did not even try to give reasons or justify his failure to comply with the agreed settlement in terms of clauses 8 to 15 at least. This attitude does not help the Applicant as he is not coming to court with clean hands, however, the Respondent failed to do the necessary step of approaching the court to obtain the necessary order which would be having the exact amount claimed and how they came to that conclusion.

There was no amount at least available to the Assistant Registrar to determine the extent on which the warrant of execution would be satisfied after the attachment of the bank account. The Respondent used the information available furnished by the Applicant during the pleading

before the divorce was finalized to determine the accrual of the Applicant's estate. [added emphasis]

There is no doubt that the Applicant failed to comply with the settlement agreement with a reasonable period and neglected to appoint chartered accountants to assist in this regard. It is very clear he deliberately ignored the Respondent when invited to try and finalise the estate in accordance with the settlement agreement and this is demonstrated by his swift action when his bank account is attached and frozen.

I therefore believe that the Respondent did not act appropriately in obtaining the warrant of execution but should have approached court to obtain court order to sustain the issue the warrant of execution."

On appeal

[14] In this court, the appellant's argument is that the settlement agreement was incorporated and made an order of court, as such had the necessary Court Order issue a warrant of execution.

[15] Respondent's argument is that the appellant did not have a Court order to issue the warrant of execution. The appellant was wrong to rely on the settlement agreement, the same submission made in court a *quo* about lack of the judgment liability was repeated with vigor. Respondent's argument is that the figures reached by the appellant's accountants should have been on the settlement agreement.

[16] The crux of respondent's argument is that the appellant had no judgment at all. Reference is made to **Campbell v Botha and others**¹ that there is no judgment at all, therefore execution could not prevail.

[17] Furthermore, the respondent submits that the appellant should have taken certain steps. The respondent does not state which steps the appellant missed.

¹ [2008] ZASCA 126; 2009 (1) SA 238 (SCA)

[18] Respondent's argument in respect of Arbitration is that the settlement agreement provided that in the event that the parties' chartered accountants fail to agree, the matter was to be referred for Arbitration for final adjudication. It cannot be said from the settlement agreement that the court ordered determinable amount.

Discussion

[19] The issue considered by the court *a quo* is the absence of the amount in the warrant. This is not correct, the warrant has the amount or figure, hence the respondent's bank was able to freeze the amount in question. The figure is as a result of application of the clause/s agreed upon by the parties in the settlement agreement.

[20] The respondent's version in the founding affidavit in the court *a quo* quotes paragraph 4.6 which states; "*The deed of settlement also make provisos for the calculation of any accrual, if applicable...*"

[21] It is common cause that the accrual was applicable, and the settlement agreement which became a court order provides for the calculation of accrual. In compliance with the court order the appellant undertook the calculation without the participation of the respondent. The reasons for doing so have been alluded above.

[22] In **Eke v Parsons and Others**,² (**Eke**) 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..."

"The effect of a settlement order is to change the status of rights and obligations between the parties."

[23] It is a settled rule of statutory interpretation that when interpreting legislation, what must be considered is the language used, the context in

² (CCT214/14) [2025] ZACC 30, paras 29 and 31

which the relevant provision appears and the apparent purpose to which it is directed.³

[24] In addition to the principles established in *Endumeni*, in **Capitec Bank Holdings v Coral Lagoon Investments 194 (Pty) Ltd**⁴ at para [25] it is held

“ I would only add that the triad of text, context and purpose should not be used in mechanical fashion. It is the relationship between the two words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and salient interpretation is determined. As Endumeni emphasises, citing well-known cases, “[t]he inevitable point of departure is the language of the provision itself”

[25] At para [50] it is further held:

“...Meaning is ultimately the most compelling and coherent account the interpreter can provide, making use of the sources of interpretation. It is not a partial selection of interpretational materials directed at a predetermined result.”

[26] Lastly para [5] reads:

“The proposition that context is everything is not a license to contend for meanings unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text.”

[27] The context dictates that the amount was to be determined by the accountant/s; indeed, that occurred and the amount of R618 009.50. was found to be the judgment debt, since the settlement agreement was already made a court order.

[28] The interpretation of the agreement is what is envisaged in **Eke**. Respondent’s status changed to that of the debtor with a determined amount and his obligation to pay. There is no legal basis for the

³ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.

⁴ [2021] ZASCA 99, 2022 (1) SA 100 (SCA).

submission that the agreement should have the amount. In fact, respondent's argument lacks logic, considering that the settlement agreement which became the court order gave clear guidance pertaining the mechanisms to get to the accrual amount. as well as the debtor and creditor. It was not necessary for the appellant to obtain another court order. The settlement agreement is good.

[29] Furthermore, in **Eke** the action to be followed by a party is clearly stated. A litigant armed with an order may use the judgment to obtain contempt of court order or to obtain a warrant of execution. There is no preference of one over another. The court *a quo*'s view that the appellant would have first applied for contempt of court order for respondent's failure to attend the meeting cannot prevail. The court *a quo* also is not enlightening as to what steps the appellant failed to take.

[30] In paragraph 33 of **Eke** it is not envisaged that after the settlement agreement had been made an order of court, that the judgement creditor should approach the court again to obtain another judgment in order to execute. What would had been the purpose of making a settlement agreement an order of court, if it carries no executorial weight? It would be mechanical and un business like to expect the appellant to get another order whilst already in possession of same. This would be unnecessary dragging of the matter resulting in delayed justice to the prejudice of the appellant.

[31] In **Fischer v Ubomi Ushishi Trading**,⁵ the court had to answer the question of whether a divorce order has the effect that one spouse's half share in immovable property vested in the other spouse in terms of the divorce order or whether additional steps need to be taken before such vesting takes place. In conclusion it is held:

"For these reasons, and to the extent that it held that dominium of immovable property vests immediately in a spouse in accordance with a settlement agreement that is made an order of court, and that transfer of

⁵ (1085/2017) [2018] ZASCA 154; 2019 (2) SA 117 (SCA) (19 November 2018) para 29.

*such property is not required for dominium to vest, Corporate Liquidators was wrongly decided.***[40]** *It follows that the court a quo erred by relying on this case in holding that upon the granting of the divorce order, ownership of Mr Haynes' half share in the property vested immediately in Mrs Haynes; and in its interpretation of s 16 of the Deeds Registries Act."*

[32] Pertaining to the arbitration clause, what is envisaged is the dispute in the process of determining the accrual. There is no dispute at all, therefore the arbitration clause was not triggered. Respondent's failure to attend the meetings and his voluntary non- participation in the determination of accrual is not a dispute.

[33] It is trite that the appeal court may interfere with the judgment of the court a quo where it has been demonstrated that the court a quo has misdirected itself in its conclusion.

[34] Having regard to the above it is concluded that the court a quo misdirected itself in setting the warrant aside. The appeal must succeed. In the result the following order is granted.

Order

1. Appeal is upheld with costs on attorney and client scale.

N.P. MALI

JUDGE OF THE HIGH COURT

I agree

N NKOENYANE AJ

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Appellant

Adv C van der Merwe

Instructed by: Minnie & Du Preez Attorneys

Tel: 011 391 0271

Email: marius@minnieattorneys.co.za

Counsel for the 1st Respondent

Adv AA Basson

Instructed by: Arthur Channon Attorneys

Tel: 012 997 3747

Email: arthur@channonattorneys.co.za

Date of hearing: 31 July 2025

Date of Judgment: 19 September 2025