

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 44679/2016

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
28 October 2025	
DATE	SIGNATURE

In the matter between

HEGENI XOLISWA BEVERLY

Applicant

And

MINISTER OF POLICE

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 28 October 2025.

JUDGMENT

KEKANA AJ

Introduction

[1] On 28 October 2025, I gave an order in which I directed that:

1.1 The interlocutory application by the applicant is dismissed.

1.2 The applicant is ordered to pay the costs of this application on scale B.

[2] Before me was an interlocutory application, an application to amend brought by the applicant in terms of Rule 28(4) of the Uniform Rules of the Court. The application to amend only extends to the quantum claimed as stated in the particulars of claim. The applicant is of the view that the quantum claimed in the particulars of claim is not compatible with the actual prejudice suffered, hence the application.

[3] The respondent opposes the application on the basis that the matter was settled and finalised between the parties. The applicant disputes that the matter was settled and finalised between the parties on the basis that the payment made by the respondent was a part payment towards loss of income and benefits and other heads of damages are not yet settled.

Background

[4] The applicant's names were wrongfully and unlawfully listed and recorded at Criminal Record Centre as having a criminal record for armed robbery while she was never arrested, charged nor convicted of same. Because of this wrongfully recorded criminal record, the applicant could not secure permanent employment from 2008 until 2016. The applicant then instituted legal action against the respondent for loss of income and benefits, inconvenience, loss of dignity emotional stress and shock.

[5] On the 14 November 2019 the matter was set down for trial and was allocated to my brother Twala J. The matter did not proceed to trial, parties met and agreed in chambers and from the agreement, it was ordered that:

1. *The matter is postponed sine die;*
2. *The Plaintiff abandons her claim for the period from 2008 until March 2015; and*
3. *The Defendant shall be liable for plaintiff's proven or agreed damages arising from the action for the period spanning 1 June 2015 to 31 December 2016.*
4. *Each party shall pay its own costs.¹*

[6] There was no engagement between the parties after the order by my brother Twala J. The applicant brought an application to compel the respondent to comply with the order by Twala J in 2020, this application was later removed from the roll by the applicant. According to the applicant, it was only then that the respondent started to engage with the applicant. An actuary was appointed by the applicant and same was done by the respondent and both experts concluded that the applicant suffered loss of income in the sum of R223 018.00 (two hundred and twenty-three thousand and eighteen rands).

[7] On or about 9 June 2021, the respondent's attorneys caused a letter to be issued and sent to the applicant's attorneys with an offer of R223 018.00 (two hundred and twenty-three thousand and eighteen rands). The respondent's letter was crafted as follows:

"The Defendant is desirous in settling this matter with the Plaintiff in order to save unnecessary further costs.

We hereby offer R223 018.00 (Two Hundred and Twenty-Three Thousands and Eighteen Rands) as "full and final settlement" of the matter.

We are further instructed to offer party and party costs on a magistrates' scale in this respect.

¹ Court Order by Twala J, 14 November 2019.

*We will await the Plaintiffs' response by the latest the 15th of July 2021*².

[8] On 17 June 2021, the applicant's attorneys send a letter whose content can be summarised as follows:

[8.1] Paragraph 1 acknowledges the receipt, and the content of the respondent's letter dated 9 June 2021.

[8.2] Paragraph 2 advises the respondent that the offer has been accepted by their client.

[8.3] Paragraph 3 advises the respondent to note that the amount offered is limited to loss of income and that the applicant will still pursue other claims i.e. claims for inconvenience, loss of dignity and stress and emotional shock in the sum of 1500 000,00 (One million five hundred thousand rands) and that they have instruction to pursue these claims.

[8.4] Paragraph 4 reads that..." *please find attached our Trust account banking details in respect of your offer*"³.

[9] The crisp issue is whether the amendment raises a triable issue since the applicant accepted an offer in "full and final settlement". Subserviently, whether the claim by the applicant, the plaintiff in the main action, has been finalised in law.

Contentions by the parties

[10] The applicant argues that there was no written agreement between the parties with regard to the full and final settlement of the matter, that there were no negotiations held between the parties prior to the alleged settlement. The applicant further argues that the offer that was made by the respondent was only in respect of loss of income and benefits. That in accepting the said offer the applicant made it clear that she was intending to proceed further with other claims set out in the particulars of claim.

² Letter by the respondent to the applicant (dated 9 June 2021).

³ Letter by the applicant to the respondent (dated 17 June 2021).

[11] The respondent contends that there was an offer made to the applicant as per the letter dated 9 June 2021 which enclosed an offer made in full and final settlement. The offer made by the respondent was in full and final settlement of the entire matter and it was not in relation to any head of damage. The said offer was accepted by the applicant in a letter dated the 17 June 2021 and the amount as accepted was paid by the respondent. Tritely this offer finalised the matter.

Legal principle and analysis.

[12] I wish to deal first with the application to compel which was launched by the applicant, which sought to compel the respondent to comply with the order by my brother Twala J. The applicant argues that the respondent failed to engage with the applicant after the order and hence the application to compel.⁴ The basis of this application remains nebulous as upon the reading of the order by my brother Twala J, there was no direction to the respondent except that the respondent “shall be liable for plaintiff’s proven or agreed damages arising from the action for the period spanning 1 June 2015 to 31 December 2016”. Reference to proven damages means that the applicant is expected to present to the respondent such damages as she is able to prove either with the assistance of an expert. It is only once the expert has quantified the damages and same being presented to the respondent that the respondent will be obligated to comply with paragraph 3 of the order by Twala J. Absent quantified damages there was no obligation on the part of the respondent to engage the applicant. But it appears based on the evidence before me that the applicant prematurely launched an application to compel prior to having an expert quantifying the damages as directed by paragraph 3 of the Court order. The services of an expert were sourced after the application to compel was already launched.

[13] I will deal with the crisp issue of whether the applicant in accepting the offer made by the respondent extinguished any further claim by it and that the matter is finalised. The result of which would mean that there are no triable issues and consequently it would mean the application to amend as brought by the applicant would be manifestly unfounded.

⁴ Para 14 of the applicant’s head of argument.

- [14] For one to say there was an agreement, or the matter was finalised, the debtor must state clearly in writing: that the offer is made in full and final settlement and if the creditor does not wish to accept the terms she must instead, communicate her rejection and request full payment. In this case there was acceptance of the offer made, reference is made to paragraph 2 of the letter by the applicant to the respondent reads as follows:

"Kindly be advised that your offer of R 223 018 (Two Hundred and twenty-three thousand and Eighteen Rands) in respect of loss of earnings is acceptance to our client. (sic)

- [15] Not only did the applicant accept the offer made but went further in the same reply letter to provide the respondent with its trust account banking details directing where the money is to be deposited. Counsel for the applicant could not clearly explain why they provided trust account banking details if they were not in agreement with the offer made.

- [16] In determining the existence of the intention to settle the dispute conclusively (*animus compromittendi*) one will look at the use of phrases like "full and final settlement," "without prejudice," or "in settlement of your claim" as strong evidence of this intention. The offer made was not in relation to any head of damage as on the reading of the letter by the respondent the intention was to finalise the matter in its entirety. This is clear from the wording in paragraph 1 of the letter by the respondent which state that:

"The Defendant is desirous in settling this matter with the Plaintiff in order to save unnecessary further costs.

- [17] It is clear on the reading of the above paragraph that 'unnecessary further costs' can be saved only if the matter is finalised in its entirety, as the pursuance of other head of damages would trigger further costs. Again, the phrase "*full and final settlement*" was used by the respondent to accentuate its intentions.

- [18] Didcott J in the **Andy's Electrical**⁵ case appropriately reasoned that the objective should be to determine the real intention of the debtor. The enquiry to

⁵ Andy's Electrical v Laurie Sykes (Pty) Ltd 1979 3 SA 341 (N) para 42.

be whether the debtor intended to settle the whole claim by paying a particular amount, or whether payment was made with the intention that the rest of the claim remains in issue. If the debtor's intention was (*animo contrahendi*), the acceptance thereof by the respondent would give rise to the conclusion of a new contract should the offer be accepted by the respondent.

[19] From the evidence before me, the applicant does not dispute that she accepted the offer, the applicant's argument is that she added conditions when accepting the offer. In the case of **Tractor & Excavator Spares (Pty) Ltd v Lucas J Botha (Pty) Ltd** it was held that "any conditions attached to the acceptance are irrelevant⁶. There was no express nor unequivocal rejection of the offer by the applicant instead there was an acceptance. There was no evidence before me of any attempt to return the money neither was there any evidence that the money was preserved and unused pending the finalisation of the dispute assuming the applicant was of the view that there were still further claims to pursue. By retaining the proceeds of the [money] and appropriating it the applicant became bound by the terms of the offer.⁷

[20] I agree with the submission made by counsel for the respondent and the authority relied on that: if the debtor's payment constitutes an offer of compromise which the creditor accepts, the creditor generally cannot make any further claim against the debtor.⁸ Also that it does not help the creditor to accept the offer of compromise "without prejudice" or to add terms and conditions to the debtors' offer of compromise, the reason being that the offer of compromise (made in full and final settlement) is generally accepted based on the implied (if not express) condition that the creditor abandons the balance of his claim⁹.

[21] Again, one must make a distinction between a payment for admitted liability and payment to effect a compromise (offer). The respondent in its letter uses the words 'offer' and applicant in its acceptance (reply letter) uses the words 'your offer' from which conclusion can be drawn that both parties understood it to be a payment to effect a compromise and not a payment of admitted liability. The

⁶ *Tractor & Excavator Spares (Pty) Ltd v Lucas J Botha (Pty) Ltd* 1966 (2) SA 740 (T) 743 D-E.

⁷ *Burt v National Bank of SA Ltd* 1921 AD 59.

⁸ Contentious Issues Arising from Payments made in Full and Final Settlement" [2008] PER 24.

⁹ *Andy's Electrical v Laurie Sykes* 1979 3 SA 341 (N) 343A-B.

words 'offer' can only be used when one intends to effect a compromise. From the reading of the letter by the respondent, it is clear that the intention was to effect a compromise, bring the entire matter to finality and this could also be supported by paragraph 3 of its letter which seeks to with the legal costs to the matter.

- [22] Another aspect worth mentioning though not central towards the determination of the application before me is that the particulars of claim which the applicant wishes to amend in bringing this application, is about increasing the quantum¹⁰. But of importance is that paragraph 10 cannot be read independent from its precursor.¹¹ Paragraph 9 attempts to give a background to justify for the amounts claimed in paragraph 10. It states on how since 2008 the applicant applied for more than 15 positions in government but was unsuccessful due to the criminal record. It is an ironic paradox, a contradiction in terms that the applicant brings this application to amend what was initially R5 000 000 00 (five million rands) to R7 000 000 00 (seven million rands) when the very purpose of the R5 000 0000 initially claimed was the alleged loss of income, inconvenience, loss of dignity, emotional stress and shock as of 2008 till 2015 while in fact the ineluctable consequence of the order by Twala J, is directing otherwise. Paragraph 2 of the order states that:

The Plaintiff abandons her claim for the period from 2008 until March 2015.

- [23] With the applicant having abandoned her claims for the period from 2008 until 2015, the only liability that will arise on the part of the respondent as far as this matter is concerned will be for damages as directed by paragraph 3 of the order. The order by my brother Twala J, in para 3 thereof, refers to plaintiff's proven damages spanning from 1 June 2015 to 31 December 2016.

Conclusion

- [24] The offer came on a specific character that of a "full and final settlement" and if the applicant was not happy with the character the offer came with, she should have rejected it. The applicant cannot accept the money and not the character

¹⁰ Paragraph 10 of the plaintiff's particulars of claim.

¹¹ Paragraph 9 of the plaintiff's particulars of claim.

thereof nor subserviently attach conditions. I dealt with the legal position of conditions attached to such offers in paragraph 19.

[25] The acceptance of an offer by the applicant in full and final settlement created new contract that, upon performance (satisfaction) by the respondent, extinguishes any further claim(s). The applicant cannot surreptitiously use an application to amend to revive that which has been finalised. It is against this background that one concludes that there exist no triable issues as the matter was finalised. Consequently, the application to amend cannot succeed.

Order

[26] In the premises, the following order is granted:

1. That the interlocutory application by the applicant is dismissed.
2. That the applicant is ordered to pay the costs of this application on scale B.



KEKANA ND

Acting Judge of the High Court

APPEARANCES

FOR THE APPLICANT

Mashego Attorneys Inc

Mrememberkanego@yahoo.com

073 727 3106

FOR THE RESPONDENT

Adv N Nharmuravate

Instructed by State Attorney, Johannesburg

BNkoana@justice.gov.za

011 330 7600