



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 4094/2017

In the matter between:

JACOBUS MARX NO

FIRST APPLICANT

JOHANETTE HELENA MARX NO

SECOND APPLICANT

and

JAN JOACHIM NEL NO

FIRST RESPONDENT

JOYCE NEL NO

SECOND RESPONDENT

HANNES LOTTER NO

THIRD RESPONDENT

CORNELIUS JOHANNES HERCULAS VAN TONDER

t/a NJ KONSULTANTE

FOURTH RESPONDENT

In re the matter between:

JAN JOACHIM NEL NO

FIRST PLAINTIFF

JOYCE NEL NO

SECOND PLAINTIFF

HANNES LOTTER NO

THIRD PLAINTIFF

CORNELIUS JOHANNES HERCULAS VAN TONDER

t/a NJ KONSULTANTE

FOURTH PLAINTIFF

and

JACOBUS MARX NO

FIRST DEFENDANT

JOHANETTE HELENA MARX NO

SECOND DEFENDANT

Neutral citation: *Marx NNO v Nel NNO and Another* (4094/2017) [2025] ZAFSHC 369
(24 November 2025)

Coram: Daffue J

Heard: 3 November 2025

Delivered: This judgment was handed down electronically by circulation to the

parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 12h00 on 24 November 2025.

Summary: Application for leave to appeal – court refused to grant amendment to a plea after settlement agreement made an order of court – no agreement reached during accounting and debatement process consequent upon court order – defendants resorted to application to amend their plea for the court to adjudicate upon the legality of the underlying agreement relied upon by the plaintiffs for the relief sought and obtained by agreement – application for leave to appeal dismissed.

ORDER

The application for leave to appeal is dismissed with costs, inclusive of the costs of senior counsel on scale C.

JUDGMENT

Daffue J

[1] The defendants in the main action are the applicants in the application for leave to appeal. It is their case that there are reasonable prospects of success on appeal, and a compelling reason why leave to appeal should be granted to the full bench of this division. I shall refer herein later to the parties as in the main action to avoid confusion.

[2] The test for leave to appeal has recently been restated in *Ramakatsa and others v African National Congress and Another*,¹ and I quote:

‘... The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.’

[3] I do not intend to regurgitate what I have said in my judgment but shall merely address the issues raised by Mr P Louw SC on behalf of the defendants. Mr Louw was not involved in the dispute between the parties, the eventual settlement thereof and the application to amend. The settlement agreement was incorporated in the court order of 31 October 2023. Mr Louw submitted that if paragraph 6 of the court order is properly

¹ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 para 10.

interpreted, the parties intended the door to be reopened for the adjudication of all disputes between them, ie therefore also to allow the defendants to rely on the alleged illegality of the underlying agreement. He submitted that another court would reasonably come to such a conclusion.

[4] It is important to note that in their particulars of claim the plaintiffs claimed delivery of an account, debatement of that account, payment of 66.6% of the nett proceeds so determined as well as costs of suit. Nothing more and nothing less. On the proverbial steps of the court building, and as the parties were to start with the trial, the matter was settled. The plaintiffs obtained exactly what they claimed. The accounting and debatement process has been agreed upon in paragraphs 1 to 5 of the court order. I do not repeat same. Paragraph 6 of the court order reads as follows:

'If the parties are unable to agree upon the outcome, they shall, whether by pre-trial conference or otherwise, formulate a list of the disputed issues that shall be set down for trial.'

The defendants now latch onto this paragraph in an endeavour to obtain an amendment. The 'outcome' referred to cannot be anything else than the outcome of the accounting and debatement process.

[5] I do not agree with Mr Louw that a reasonable court would come to a different conclusion than the one arrived at by me if the settlement agreement, as contained in the court order, is properly interpreted. The unitary approach in interpretation should be followed. The wording of the text, the context of the order in totality and in which the parties came to their agreement, as well as the purpose of the agreement must be considered. The purpose was clearly to allow for the adjudication of possible disputes relating to the accounting and debatement process and not anything else. No right was provided to the defendants to ask for a re-opening of the case to deal with disputes relating to the legality of the underlying agreement and/or their contractual obligations; the so-called merits of the plaintiffs' case have been settled by necessary implication. The parties agreed to try reaching an agreement as to the amount – the *quantum* – payable to the plaintiffs once the defendants have provided documentary proof in the form of an accounting process as provided for in paragraph 1 of the court order.

[6] I wish to repeat the *dictum* of Madlanga J in *Eke v Parsons*:²

'The effect of a settlement order is to change the status of the 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").'

The defendants tried to impress upon me that a mere procedural agreement was entered into between the parties insofar as the 'issue of liability' was not addressed at all. They tried to differentiate the facts *in casu* from those in *Eke v Parsons*. I disagree. The substantive relief claimed in the particulars of claim were granted as agreed upon.

[7] The only litigation that the parties foresaw when they entered into their settlement agreement was the possibility that they would be unable to agree upon the outcome of the accounting and debatement process. Nothing more than that. Just as the parties are bound by an agreement to limit disputes in litigation, a settlement agreement has the same effect. Harms JA stated it as follows in *F & I Advisors (Edms) Bpk en 'n Ander v Eerste Nasionale Bank van Suidelike Afrika Bpk*:³

'n Party is gebonde aan 'n ooreenkoms gesluit ter beperking van geskilpunte in 'n geding. . . . Soos met enige skikking ondervang dit die onderliggende dispute, ook dié wat op die geldigheid van 'n skuldoorsaak betrekking het. Daar mag omstandighede wees waar 'n hof 'n party nie aan so 'n ooreenkoms gebonde sal hou nie, maar in die onderhawige geval is geen faktore aan ons voorgehou waarom die appellante van hulle ooreenkoms verlos moet word nie.' (Emphasis added.)

The Court confirmed in this *dictum* that parties are bound by their agreements, inclusive of settlement of disputes relating to the validity of causes of debt. I am of the view that no factors have been placed before me as to why the defendants should not be held by their agreement. Therefore, I am also satisfied that there is no reasonable possibility that another court would come to a different conclusion. There is also no compelling reason why leave to appeal should be granted. The application has no merit.

² *Eke v Parsons* [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) para 31.

³ *F & I Advisors (Edms) Bpk en 'n Ander v Eerste Nasionale Bank van Suidelike Afrika Bpk* [1998] ZASCA 65; 1999 (1) SA 515 (SCA); [1998] 4 All SA 480 (A) at 524 F.

Order

[8] In the result, the following order is made:

The application for leave to appeal is dismissed with costs, inclusive of the costs of senior counsel on scale C.



J P DAFFUE
JUDGE OF THE HIGH COURT

Appearances

For the Applicants (Defendants in the main action):
Instructed by:

P Louw SC with JW Steyn
Kramer Weihmann Attorneys,
Bloemfontein

For the Respondents (Plaintiffs in the main action):
Instructed by:

N Snellenburg SC
Peyper Attorneys, Bloemfontein.