IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable

Case no: 4909/2020

In the matter between:

TIMAC AGRO SOUTH AFRICA (PTY) LTD **APPLICANT**

[Registration No. 2011/005705/07]

And

DARIA BOTES N O **RESPONDENT**

[In her capacity as Executrix of the deceased estate of

Dawie Grobbelaar (ID no. 9[…])]

Neutral citation: *Timac Agro South Africa (Pty) Ltd v Botes N O* (4909/2020) [2026] ZAFSHC 24 (22 January 2026)

Coram: VAN ZYL J

Heard: 5 June 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The time and date for hand-down is deemed to be 14h15 on 22 January 2026.

Summary: Uniform rule 41 of the Uniform Rules of Court application – settlement agreement to be made an order of court – no duress or undue influence – not *contra* s 35(12) of Administration of Estates Act 66 of 1965.

ORDER

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1 The settlement agreement concluded between the applicant and the respondent on 13 October 2022 is made an order of court in terms of Uniform rule 41.

2 The applicant is to pay the wasted costs of 5 June 2023, with counsel`s costs to be taxed on Scale B.

3 The respondent is to pay the costs of 5 June 2025, with counsel`s costs to be taxed on Scale A.

4 Subject to paragraphs 2 and 3 above and other costs orders previously made, the respondent is to pay the costs of the application, with costs of counsel, if and when employed, to be taxed on Scale C.

JUDGMENT

Van Zyl J

[1] The applicant approached this Court for an order in the following terms:

'1. That the settlement agreement concluded between the Applicant and Respondent on 13 October 2022 be made an order of court in terms of Rule 41 . . .

2. That a Writ of Execution be authorized against the movable goods of the deceased estate.

3. Costs of the application.'

Background

[2] The applicant sold and delivered fertilizer to the late Mr Dawie Grobbelaar (Mr Grobbelaar) during 2019. Mr Grobbelaar failed to pay the purchase price to the applicant, whereupon the applicant instituted action against Mr Grobbelaar, on 11 December 2020, for payment of the outstanding balance, with interest and costs. Mr Grobbelaar defended the action and filed a special plea and plea, in response whereto the applicant filed a replication.

[3] On 24 October 2021, Mr Grobbelaar passed away. On 20 January 2022, the respondent was duly appointed as the executrix of the deceased estate of Mr Grobbelaar by the Master of the High Court, Bloemfontein (the Master). In terms of Mr Grobbelaar's will, the respondent was appointed as the sole beneficiary and heir of Mr Grobbelaar's estate.

[4] On or about 13 October 2022, the applicant and the respondent concluded a settlement agreement in respect of the aforesaid action. In terms of the settlement

agreement attached to the founding affidavit as annexure 'TS1', the parties, *inter alia*, agreed as follows:

'(a) That the Respondent makes payment to the Applicant in the amount of R920 879.00 in full and final settlement of the aforesaid action.

(b) That the Respondent undertakes to pay the settlement amount on or before 23 January 2023.

(c) Should the Respondent fail to make the aforesaid payment, the full outstanding amount as claimed by the Applicant in its particulars of claim in the action will become immediately due and payable.

(d) That the Applicant will be entitled to approach Court to have the settlement agreement made an order of Court in terms of Rule 41.'

[5] The respondent failed to make payment of the settlement amount by 23 January 2023, whereupon the applicant issued the present application. The respondent opposed the application and an answering affidavit and replying affidavit were duly filed.

The previous hearing of the application

[6] The application previously served before me on 15 June 2023. During the hearing, both parties enjoyed legal representation.

[7] At the commencement of that hearing, Mr Zietsman, appearing on behalf of the applicant, indicated that the applicant is not persisting with prayer 2 of the notice of motion and is only seeking an order in terms of prayers 1 and 3 of the notice of motion.

[8] Although the respondent initially averred, in her answering affidavit, that she signed the settlement agreement under undue influence and also questioned the authority of the deponent to the founding affidavit to have deposed to the said affidavit, Mr Ploos van Amstel, appearing on behalf of the respondent, indicated, at the commencement of that hearing, that the respondent is no longer persisting with these two points of opposition.

[9] During that hearing, the point was raised by and on behalf of the respondent that the applicant should have either cited the Master as a party to the application or served the application on the Master since the Master has a direct and substantial interest in the subject matter of the application. Although Mr Zietsman contended the contrary on

behalf of the applicant, I agreed with their contention that the Master has a direct and substantial interest in the application.

[10] I subsequently handed down a judgment in terms whereof I, *inter alia*, removed the application from the roll, ordered the applicant to serve a copy of the application papers and the parties' respective heads of argument on the Master and requested the Master to file a report in respect of the application. I further ordered that the wasted costs of 15 June 2023 stand over for later adjudication.

The next hearing

[11] The Master duly filed a report on 29 November 2023.

[12] From the contents of the file, it is evident that the matter again served before Court on 24 April 2025. By that time, the respondent's attorneys had withdrawn as attorneys of record. The respondent consequently appeared in person. On that day, the matter served before Ntanga AJ.

[13] From a perusal of the court order that was issued on that day, it is evident that there was an application for postponement by the respondent, which application was granted 'for purposes of affording Respondent opportunity to approach Legal Aid for legal assistance within 14 days of this order'. It was further ordered that the matter was postponed to 5 June 2025 and, should the respondent fail to secure legal representation by then, the applicant shall be entitled to proceed with the application. The respondent was ordered to pay the wasted costs.

The present hearing

[14] The applicant was represented by Mr Verhoef and the respondent appeared in person. I enquired from the respondent about Legal Aid South Africa (Legal Aid) assistance for her, but she responded that, although she did approach Legal Aid, they indicated that, because she had not been cited in her personal capacity in the matter, Legal Aid cannot assist her.

[15] Mr Verhoef indicated that he holds instructions to request that the application proceeds in accordance with the court order of 24 April 2025. The respondent consequently indicated that she will be representing herself and requested an

opportunity to address the Court to explain how it came about that the amount owed to the applicant has not been paid.

[16] I allowed the respondent to address me as requested. Although the facts and events which she related to me indeed explained why the amount due to the applicant has not been paid, being circumstances which were also explained in the answering affidavit, same did not constitute a defence and she admitted that the outstanding amount is still due and payable to the applicant. She, however, requested that I consider not making the settlement agreement an order of court, since that, according to the respondent, will result in the applicant having to be paid before the administration of the estate has been finalised. She also requested that she be allowed to pay the outstanding amount in instalments. I explained to her that it is not in my discretion whether to make an order or not, since I must adjudicate the matter on legal basis and, should I find that the applicant is legally entitled to an order, I am compelled to grant an order in its favour.

[17] Uniform rule 41(4) of the Uniform Rules of Court determines as follows:

'Unless such proceedings have been withdrawn, any party to a settlement which has been reduced to writing and signed by the parties or their legal representatives but which has not been carried out, may apply for judgment in terms thereof on at least five days' notice to all interested parties.'

[18] Such a settlement must be a settlement which intend to bring an end to the suit as a whole. (See *Siebert & Honey v Van Tonder* 1981 (2) SA 146 (O) at 148D.)

[19] In the respondent's address to Court, the respondent raised that the settlement agreement was not concluded freely and voluntarily. In this regard, she indicated that the applicant's attorneys indicated that, should she fail to sign the settlement agreement, the applicant will attach her assets and sell the farm. This is despite the fact that it was previously indicated by Mr Ploos van Amstel, on behalf of the respondent, that the respondent is not persisting with this point of opposition.

[20] Undue influence is a form of improper pressure brought to bear upon a person in order to induce him or her to enter into a contract. The test formulated for undue

influence was articulated in the matter of *Patel v Grobbelaar* [1974] 1 All SA 518; 1974 (1) SA 532 (A) at 534A, where the Court set out concisely what must be proved by a respondent/defendant who resists enforcement of a contract on the ground of undue influence:

(a) That the other party obtained an influence over him or her;
(b) That this influence weakened his or her powers of resistance and rendered his or her will compliant; and
(c) That the other party used his influence in an unscrupulous manner to persuade him or her to agree to a transaction which:
(i) was prejudicial to him or her; and
(ii) which he or she would not have concluded with normal freedom or will.

[21] In the answering affidavit, the respondent averred that the applicant threatened to proceed with the pending court case should she not agree to sign the settlement agreement.

[22] If what was conveyed to the respondent by the applicant's attorney is to be considered a 'threat', it should also be considered against the requirements for duress.

[23] One of the required elements of duress is that the threat or intimidation must be *contra bonos mores*. (See *BOE Bank Bpk v Van Zyl* 2002 (5) SA 165 (KPA) at 177B-C.)

[24] In the discussion of this requirement as set out in G B Bradfield's *Christie's Law of Contract in South Africa* 8 ed (2022) at 374, the following is set out:

'A person who is legally and morally entitled to do something to another should not suffer at the hands of the law for doing it, nor for threatening to do it, and it follows that, if such a threat induces another to contract with such person, the person induced to contract by such threat cannot be heard to complain. So a threat to dismiss an employee lawfully is not duress in the eyes of the law, *nor is a threat to sue*, since the courts are open to all and the only penalty for rash litigation is costs.' (My emphasis.)

[25] Had the respondent not signed the settlement agreement, the applicant would have been entitled to continue with its litigation which was pending at that stage. The

'threat' of continuing with the litigation, which may have resulted in the attachment of assets, was therefore not *contra bonos mores.*

[26] I am also mindful of the fact that it is stated in the replying affidavit, in response to the allegations in the answering affidavit, that, throughout the negotiations and the conclusion of the settlement agreement, the respondent was represented by her erstwhile attorney of record.

[27] There is, in my view, consequently no reasonable grounds to conclude that duress or undue influence was present during the conclusion of the settlement agreement.

Section 35(12) of the Administration of Estates Act 66 of 1965 (the Act)

[28] In terms of s 35(12) of the Act, creditors of a deceased estate are paid only after the liquidation and distribution account has lain open for inspection and is free of objections.

[29] In this regard, the Master states as follows at paragraph 6 of his report:

'Payment of the claim can however only occur once the account has lain for inspection free from objections in terms of Section 35(12) of the Administrations of Estates Act, *supra*.'

[30] As pointed out in the supplementary heads of argument filed on behalf of the applicant, there should be a difference drawn between a judgment in terms of the settlement agreement and execution of the judgment against the deceased estate. Considering that the applicant abandoned prayer 2 of the notice of motion, the applicant is not attempting to execute its claim against the deceased estate, but merely to obtain a judgment against the estate which would then be dealt with in the liquidation and distribution account as a claim against the estate.

[31] The elevation of the settlement agreement to a judgment of Court, as agreed in the settlement agreement, will therefore not constitute a transgression of s 35(12) of the Act.

Conclusion

[32] The applicant is consequently entitled to an order in terms of prayer 1 of the notice of motion.

Costs

[33] As previously indicated, the wasted costs of 15 June 2023 stood over for later adjudication.

[34] In my previous judgment, paragraph 14 thereof, I stated as follows:

'With regard to the wasted costs of 15 June 2023 Mr Ploos van Amstel submitted that the applicant should be ordered to pay same, since the applicant is *dominus litis* and consequently had the obligation to have either cited the Master or to have served the application upon the Master. Mr Zietsman, on the other hand, submitted that the wasted costs should stand over for later adjudication, since the contents of the Master's report may have an influence when considering an appropriate cost order.'

[35] During the present hearing, Mr Verhoef, on behalf of the applicant, requested that the respondent be ordered to pay such wasted costs.

[36] In my view, the Master should indeed initially have either been cited as a party to the application or the application should have been served on the Master. It was the duty of the applicant, being *dominus litis*, to have done so, which the applicant failed to do. Therefore, in the exercise of my discretion, I am of the view that the applicant should be ordered to pay the wasted costs of 15 June 2023. Considering that it was Mr Ploos van Amstel who appeared on behalf of the applicant, considered in accordance with the applicable relevant principles, I am furthermore of the view that such costs should include the costs of counsel, taxed on Scale B.

[37] With regard to the costs of the appearance on 5 June 2025, the applicant, as the successful party in the application, is entitled to these costs. I agree with the contention of Mr Verhoef that such costs are to include costs of counsel, taxed on scale A.

[38] In respect of the costs of the application as such, the counsel involved, if and when employed, was Mr Zietsman and therefore where costs of counsel are applicable in relation thereto, such costs are to be taxed on Scale C.

Order

[39] The following order is made:

1 The settlement agreement concluded between the applicant and the respondent on 13 October 2022 is made an order of court in terms of Uniform rule 41.

2 The applicant is to pay the wasted costs of 5 June 2023, with counsel`s costs to be taxed on Scale B.

3 The respondent is to pay the costs of 5 June 2025, with counsel`s costs to be taxed on Scale A.

4 Subject to paragraphs 2 and 3 above and other costs orders previously made, the respondent is to pay the costs of the application, with costs of counsel, if and when employed, to be taxed on Scale C.

C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances

For the applicant:	A A Verhoef
Instructed by:	Muller Gonsior Attorneys, Bloemfontein
For the respondent:	In person.