



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

Case Number: 2024-099637

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/ NO
(3)	REVISED: YES/NO
<u>3 / 03 / 2026</u>	
DATE	SIGNATURE

In the matter between:

IDC ARCHITECTS CC

Applicant

And

**THE TRUSTEES OF THE INDEPENDENT
DEVELOPMENT TRUST**

Respondent

JUDGMENT

STRYDOM, J

Introduction

- [1] This is an application to make an arbitration award, confirmed on appeal by the Arbitration Appeal Board, an order of court pursuant to the terms of section 31(2)

of the Arbitration Act 42 of 1965 ("the Act"). In terms of the arbitration award, the respondent was ordered to pay the applicant the sum of R11 854 620.88 together with interest ("the award").

- [2] The respondent applied for condonation for the late filing of its answering affidavit and the applicant applied for the late filing of its replying affidavit. These applications were not opposed and are hereby granted.
- [3] The respondent opposes the application on the basis that, following the confirmation of the award on appeal on 4 August 2021, the parties concluded a binding settlement agreement on 25 March 2022, under which the amount payable to the applicant was reduced. On 5 April 2022, pursuant to the settlement agreement, the respondent paid the applicant the reduced amount in full and final settlement of the award. The applicant accepted payment of the reduced amount as a full and final settlement, thereby compromising and extinguishing the award.
- [4] The respondent accordingly contends that there is no basis to make the award an order of the court. The award was superseded by a settlement agreement and no longer exists.
- [5] Section 31 of the Act provides as follows:

"(1) An award may on the application to a court of competent jurisdiction by any party to the reference after due notice to the other party or parties, be made an order of court.

(2) The court to which application is made, may, before making the award and order of court, correct in the award any clerical mistake or any patent error arising from any accidental slip or omission.

(3) An award which has been made an order of court may be enforced in the same manner as any judgment or order to the same effect."

- [6] The principles underlying the aforementioned provisions have been affirmed in the case of *Peninsula Eye Clinic (Pty) Ltd v Newlands Surgical Clinic and Others* [2014] 1 All SA 592 (WCC) at paragraph [9], where the court held as follows:

"A party to an arbitration which makes application in terms of section 31(1) for an award in its favour by the arbitrator to be made an order of court 'accepts an onus to prove that it is in possession of an award that can properly form the subject of an order of court'".

- [7] Section 31(1) provides the applicant with the right to approach a court for an order that the award be made an order of the court. With reference to *Peninsula Eye Clinic, supra*, all that is required from a party who obtained an arbitration award in its favour is to prove the award *'which can properly form the subject of an order of court'*. If the award is no longer enforceable, for instance, because the original debt prescribed or was superseded by a settlement agreement, such an award could no longer properly form the subject of a court order.
- [8] This is what the respondent avers happened in this matter. It was argued that it would amount to an abuse of the court processes to apply for an award to be made an order of court when the award no longer existed. It was argued that the application is manifestly inappropriate and was so unreasonable and out of line that it constitutes an abuse of the process of court. (see: *Lawyers for Human Rights v Minister in the Presidency 2017 (1) SA 645 (CC)* at para [20]).
- [9] I accept that it would amount to an abuse of court process to apply for an award to be made an order of court if the award was extinguished by subsequent settlement and payment in terms thereof. The question in this application is whether this is what happened.
- [10] The following facts are either common cause between the parties, or not seriously placed in dispute:
 - a. That a contractual relationship existed between the parties in terms of which architectural services were provided to the respondent.
 - b. That a dispute arose between the parties.
 - c. That the alleged debt payable to the applicant became due.
 - d. That the agreement contained an arbitration clause.
 - e. That the dispute was referred to arbitration during or about 2015.

- f. That there was a delay of more than six years to finalize the arbitration.
- g. That an award, dated 20 March 2021, was confirmed on appeal on 4 August 2021, whereby the respondent was ordered to pay the applicant the amount of R11 854 620.88, together with interest and costs. The Arbitration Appeal Tribunal confirmed that the amount was payable and made further cost orders in relation to the appeal.
- h. That negotiations between the parties followed thereafter concerning payment of the award.
- i. These negotiations culminated in the respondent drafting a settlement agreement and sending it to the applicant for signature, on 25 March 2022. The settlement figure in this settlement agreement ("the first settlement agreement") was R8 000 000, payable in full and final settlement of the award. There was no further provision for the payment of interest or costs. This agreement was signed on behalf of the applicant and emailed back to the respondent. The email from Mr Ilori, acting on behalf of the applicant, to which the first agreement was attached, was sent to Mr Rapetswa, a representative of the respondent. This email was attached to the respondent's answering affidavit, marked "TM1".
- j. That the parties do not place reliance on this first agreement to prove that the the arbitration award was settled. The applicant was willing to settle the total outstanding debt, including interest and costs, in the amount of R8 000 000. (It should be mentioned that on the face of this first agreement, it appears as if Ms. Tebogo Malaka, who is the deponent of the answering affidavit, signed this agreement on behalf of the respondent, although this is denied by the respondent).
- k. That on 5 April 2022, the respondent paid an amount of R8 960 051.27 into the applicant's account. The applicant accepted payment and retained the amount.
- l. That on 5 July 2024, about 2 years and three months later, a letter of demand was sent by the applicant to the respondent claiming the

difference between the amount of the award and that which was previously paid. The claim was for payment of a further R 2 894 569.53. In the letter of demand no claim was made for the payment of the awarded costs or interest.

m. That on 4 September 2024, the applicant served this application on the respondent for the arbitration award and the award on appeal, to be made an order of court.

[11] The applicant alleges in its founding affidavit that the payment received constituted a partial payment of the award amount. The respondent avers that on the same day that the first agreement was signed and sent to the respondent, a second settlement agreement was prepared by substituting the amount of R8 000 000 with the figure of R9 000 000. The increased amount was inserted because the respondent's finance department estimated the amount owing to be "*in the region of R9 000 000*". This was telephonically conveyed to Mr. Ilori, who accepted the figure. The second agreement reflecting this amount was emailed to the applicant and he agreed to the insertion of this amount. The respondent states that this agreement was concluded and signed by both parties. Following further reconciliation of figures on the same day, Mr. Rapetswa again phoned Mr. Ilori, and it was orally agreed that the amount of R9 000 000 would further be adjusted to the amount of R8 960 051.27, which would constitute the full and final settlement of the award. It was agreed that there was no need to amend the signed second agreement to reflect the deduction from the R9 000 000 by the amount of R39 984.73.

[12] The respondent denies the existence of this alleged second agreement, that he signed same, or that the telephone discussion took place to reduce the amount. Although a second agreement, attached to the answering affidavit, appears on its face to be signed on behalf of both parties, the applicant denies that it was signed on the applicant's behalf. Forgery is alleged.

[13] As the applicant disputed the existence of the second agreement, it filed a notice under Rules 35(12) and (14) of the Uniform Rules of Court, requesting that the email correspondence evidencing the sending and receiving of the second

settlement agreement to the applicant be produced. The respondent initially stated that these documents were available, but later, under oath as required by the Rule, stated that this email correspondence was no longer available.

- [14] This Court cannot go behind the oath unless it can be shown that either: (i) from the discovery affidavit itself; (ii) from the documents referred to in the discovery affidavit; (iii) from the pleadings in the action; (iv) from any admissions made by the party making the discovery affidavit; (v) the nature of the case or the documents in issue, that there are reasonable grounds for supporting that the party has or has had other relevant documents or tape recordings in his possession or power, or have misconceived the principles upon which the affidavit should be made. (see: *Federal Wine & Brandy Co Ltd v Kantor 1958 (4) SA 735 (E) at 749 H*).
- [15] The respondent stated under oath that the emails are no longer available and there is no reason why this Court should not accept this allegation.
- [16] The applicant proceeded with an application in terms of Rule 30A for the production of the requested documentation, including documents to show how the amount of R8 960 051,27 which was paid to the applicant, calculated and arrived at. This application was not persisted with, and no court order was obtained.
- [17] The settlement agreement upon which the respondent relied was in any event provided to the applicant before the answering affidavit was filed during January 2025. This can be ascertained from annexure "TM", a letter from respondent's attorney to the applicant's attorney, dated 4 December 2024.
- [18] In my view, the respondent could rely on the second agreement which was referred to and attached to its answering affidavit. This does not mean that it is accepted by this Court that the second agreement was in fact concluded, as this remains a disputed issue.
- [19] A clear factual dispute arose over whether the parties entered into the second settlement agreement and whether a telephone discussion took place between Mr. Ilori and Mr. Rapetswa whereby the amount due was increased to R

9 000 000, and thereafter again reduced to R8 960 051.27. Mr. Rapetswa confirmed the allegation in the answering affidavit and in a confirmatory affidavit.

- [20] The applicant elected not to have the matter referred to evidence, mainly on the submission that the respondent's version should be rejected as bold and unsubstantiated, especially in light of the respondent's failure to produce the emails exchanged in relation to the second settlement agreement.
- [21] Accordingly, this Court was asked to decide the application on the papers.
- [22] The main issue is whether, after the award, the parties entered into a valid and binding agreement to reduce the amount payable, thereby extinguishing the award and rendering it unenforceable.
- [23] A secondary issue concerns prescription. Should the Court find that the debt prescribed before the applicant filed its application in terms of section 31(2) of the Act, then the main issue may become superfluous.
- [24] I will start by considering whether the debt has prescribed. The parties before this Court, dealing with the prescription issue, both wrongly accepted that the award created a new debt for purposes of determining whether the applicant's debt had prescribed. They accepted that the running of prescription started afresh from the date of the award. The respondent raised prescription as a defence, and the applicant alleged an interruption of the running of prescription, both from the wrong premise that the award created a fresh debt for prescription.
- [25] This is the wrong approach. The parties have not considered section 11(d), read with section 12(1), further read with section 13(1)(f) and (i) of the Prescription Act 68 of 1969. Section 13(1)(f) provides that when the debt is the object of a dispute which is the subject of arbitration, the running of prescription is delayed for the period mentioned in section 13(1)(i).
- [26] The prescription of a debt subject to arbitration was dealt with in *Brompton Court Body Corporate v Khumalo* 2018 (3) SA 347 (SCA). The parties have not referred to this matter before this Court during the argument. The SCA, at paragraphs [5]-

[8], found that an arbitration award generally does not create a new debt for purposes of the Prescription Act.

- [27] An arbitration award, as a judgment of a court of law, ordinarily affirms or liquidates the existing obligation. It does not reset the 3-year prescriptive period provided in section 11(d) of the Prescription Act. A judgment of a court of law will establish a *judgment debt* and would result in a 30-year prescriptive period in terms of section 11(a)(ii) of the Act. An arbitration award does not create a judgment debt.
- [28] The SCA further held, at paragraph [11], that a claim to have an arbitration award made an order of court under section 31 of the Arbitration Act 42 of 1965 is not a “debt” as defined in the Prescription Act.
- [29] A debt prescribes once the relevant 3-year period under section 11(d) has lapsed. The 3-year period is calculated from the date the debt became due, unless interrupted as envisaged in sections 14 (acknowledgment of liability), or section 15 (judicial interruption by the service on the debtor of any process whereby the creditor claims payment of the debt), or is delayed by specific statutory provisions.
- [30] Section 13(1)(i) of the Prescription Act is such a statutory provision and provides that *“the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the impediment referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) has ceased to exist, the period for prescription shall not be completed before a year has lapsed after the day referred to in paragraph (i).”*
- [31] The purpose of section 13(1)(f) is to prevent a creditor from being prejudiced by being contractually bound to resolve the dispute by way of arbitration (and thus barred from approaching courts) while the prescriptive period continues to run. Arbitration acts as an “*impediment*” to normal litigation, so prescription is delayed and then extended in terms of the statute. (See: *Le Roux and Another v Dielemaar Holdings (Cape) Pty Ltd and Another* [2024] ZASCA 118, the SCA).

- [32] A referral to arbitration does not interrupt the running of the prescription of the original debt, as would be the case where judicial process is served on a debtor with the aim of claiming a debt. What section 13(1)(f), read with subsection (1)(i), provides for a delay of the running of the prescription for a period of 1 year after an award is made. A period of one year is provided if the relevant period of prescription (3 years in this instance) would be completed before or on, or within one year after the date of the award. This date would be the date that the impediment (in this case the dispute that was referred to arbitration) lapsed. It should be noted that, given the circumstances of a specific case, the period before the debt would become prescribed could be longer than the 1-year period referred to in section 13(1)(i). For instance, if a debt becomes due, and is referred to arbitration shortly thereafter, and the arbitration is finalised within 1 year of the debt becoming due, the successful party will have 2 more years before the debt prescribes.
- [33] The institution, by way of service of judicial process whereby the creditor claims payment of a debt to make an award or an order of court, would interrupt the running of the prescription. If an order is then made, a judgment debt would be in place, which would only become prescribed after 30 years, as provided for in section 11(a)(ii).
- [34] Thus, to determine whether the debt in this matter became prescribed, the starting point is to identify the date the debt became due. The applicant, in its founding affidavit, alleges that it was 3 August 2015, whilst the respondent, wrongly so, relied on the award date of 20 March 2020 for calculating the prescriptive period. In paragraph 9 of the founding affidavit, the applicant stated that the debt became due on 3 August 2015. This paragraph was denied by the respondent.
- [35] In this case, this important date for purposes of calculation of the prescriptive period is therefore not certain. Evidence is required to ascertain this date. The respondent bore the onus of proving its claim of prescription. (see: *Gericke v Sack 1078 (1) SA 821 AD at 827 G-H*). Such evidence is not before the Court and the plea of prescription should be dismissed on this ground alone. The entire approach adopted by the respondent relating to its prescription point was based

on the wrong premise of the award creating a new debt. But there is another reason why the debt has not prescribed.

- [36] What is certain is that the parties did not raise prescription before the arbitrator and that, in terms of the award, which was admitted, the arbitration took over 6 years to be finalized. But for the terms of section 13(1)(f) and (i), the debt would have prescribed before the award was handed down. The impediment referred to in section 13(1)(i) (the arbitration), was concluded when the appeal award was handed down on 4 August 2021. Thereafter, the applicant had one year to serve an application for the award to be made an order of court to avoid prescription.
- [37] It is common cause that on 25 March 2022, within 1 year from 4 August 2021, either a settlement was reached followed by payment on 5 April 2022, as was alluded by the respondent, or that the respondent made a partial payment of the debt on this date, as alluded by the applicant. If the debt was finally settled, the prescription became irrelevant and there was nothing to be interrupted. If the payment which was made constituted partial payment, this would have amounted to at least a tacit acknowledgment of liability, as contemplated in section 14(1) of the Prescription Act. This fell within the 1-year period and in terms of section 14(2) of the Act the running of prescription commenced to run afresh. This would mean that the prescription of the debt started to run afresh from 5 April 2022 and, if regard is had on the date of the institution of this application, to wit, 4 September 2024, the application was served within the 3-year prescriptive period. Thus, if this Court finds that the payment was partial, on the version of applicant, the debt has not become prescribed.
- [38] Consequently, the point *in limine* regarding prescription is dismissed.
- [39] The applicant raised in its replying affidavit that it would seek the striking out of paragraphs in the answering affidavit relating to the allegations regarding to the alleged second agreement. No application for any such relief was made before this Court and would, accordingly, not be entertained.
- [40] The Court will now consider whether the payment made was partial or a payment in full and final settlement.

- [41] The application seeks final relief for the arbitration award, confirmed on appeal, to be made an order of this Court. In the founding affidavit, the applicant admits receipt of payment from the respondent in the amount of R8 960 051.27 but alleges that it was a part payment. The amount of R2 894 569.53 remains outstanding. The respondent's case is that the debt was settled in full for R8 960 051.27. This amount was paid to the applicant without any subsequent objection.
- [42] Thus, the matter must be determined in accordance with the rule in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).
- [43] In terms of that rule, final relief may be granted only if the facts stated by the respondent, together with those admitted by the applicant, justify such relief, unless the respondent's version is so far-fetched or untenable that it can be rejected on the papers.
- [44] The principle was refined in *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA), where it was held that a real, genuine and bona fide dispute of fact exists only where the party disputing the facts contained in the founding affidavit, seriously and unambiguously addresses the factual allegation. Bald or unsubstantiated denials do not suffice.
- [45] In my view, the mere fact that the respondent no longer had available the email correspondence to show that the second agreement was sent to the applicant for signature, is insufficient to conclude that the defence of settlement was unsubstantiated by averments, which were baldly stated, as alluded by the applicant.
- [46] The respondent's version that the arbitration award was compromised by a subsequent settlement agreement is supported by objective and largely undisputed facts, including:
- a) The existence of settlement negotiations immediately after confirmation of the award;

- b) The willingness of the applicant to sign a written settlement agreement in the amount of R8 million;
- c) Payment of a substantial lump sum of R8 960 051.27, being a very specific amount, shortly thereafter;
- d) The acceptance and retention of that payment by the applicant; and
- e) The complete silence on the part of the applicant for nearly two years and 3 months thereafter.

[47] The applicant's case rests on the assertion that no settlement was concluded and that the payment constituted a partial payment of the award.

[48] Being motion proceedings, the Court must accept the version of the respondent that the award was settled on a lesser amount and that the payment which was made was payment in full and final settlement of the award.

[49] Moreover, the assertion of partial payment is materially undermined by the applicant's own admissions. In reply, the applicant conceded that it signed the first written settlement agreement and was prepared to compromise the award for less than the amount actually paid by the respondent.

[50] Even if the Court accepts that the written agreements were never concluded, the respondent relied on an oral agreement between the parties represented by Mr. Illori and Mr. Rapetswa to the effect that the applicant was prepared to accept R 8 960 051.27 in full and final settlement of the award made. To the extent that this version is disputed by the applicant, the Court must accept the respondent's version. This version was not baldly stated and was not unsubstantiated. In fact, the evidence as a whole supports it.

[51] It is peculiar that, for approximately 2 years and 3 months after receiving R8 960 051.27, the applicant raised no complaint and made no demand for further payment. This is in itself an indication that the applicant accepted the settlement amount, as, if not accepted, one would have expected correspondence shortly after payment of this very specific amount claiming the balance. Only on 5 July 2024 did the applicant demand payment of an alleged

balance of R2 894 569.61, contending that the payment already received constituted no more than a part-payment of the arbitration award. It is also noted that in this letter of demand, no demand was made for the payment of outstanding interest and legal costs. This is a clear indication that the previous settlement included these amounts. It provides a basis for concluding that the debt was settled in full. By now asking for the award to be made an order of Court, the applicant wants to claim payment of interest and costs.

[52] The Court should also note that the applicant said nothing about the first settlement agreement he signed in his founding papers. All that was alluded to was settlement negotiations that came to naught, followed by a partial payment.

[53] A serious doubt is placed over the version of the applicant that the second settlement agreement was forged. It is highly improbable that any party would falsify signatures on an agreement just to insert a higher amount payable to a creditor.

[54] In my view, the applicant's conduct in accepting payment, failing to protest or reserve its rights, and delaying enforcement of the alleged outstanding amount for almost three years renders its version inherently implausible. It is improbable that a creditor, after receipt of a part payment of a debt that is due and payable, would do nothing for a prolonged period before demand is made for the outstanding portion of the debt.

[55] Moreover, despite the applicant disputing the authenticity of the second settlement agreement, it continued to maintain that the matter could be decided on the papers as they stood. Having elected to persist with motion proceedings, the applicant must accept the consequences of the determination on the papers.

[56] The Court accepts the respondent's version that the award was subsequently settled and was not a partial payment.

[57] The settlement agreement, whether characterized as a novation or compromise, had the effect of extinguishing the arbitration award and replacing it with the settlement obligation.

[58] Once the respondent performed under that settlement, no enforceable debt under the arbitration award remained intact. There no longer existed a *lis* between the parties.

[59] The applicant, by applying for the award to be made an order of the Court, abused the processes of this Court. In this regard the applicant failed to inform the Court in the founding affidavit that it signed an agreement in terms of which it was prepared to settle the payment of the award for R8 000 000. This calls for a punitive cost order.

[60] The following order is made:

- a. The respondent is granted condonation for the late filing of its answering affidavit.
- b. The applicant is granted condonation for the late filing of its replying affidavit.
- c. The point *in limine* raised by the respondent that the applicant's claim had prescribed is dismissed.
- d. The application is dismissed with costs on an attorney-and-client scale.


R. STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 21 January 2026

Delivered on: 03 March 2026

Appearances:

For the Applicant: Mr. K. Matlala

Instructed by: Matlala K Incorporated

For the Respondent: Adv. J. Mnisi

Instructed by: MBA Incorporated