REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 2024-002879

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO THE JUDGES: YES/**NO**

(3) REVISED: **YES**/NO

DATE: 24 February 2026

SIGNATURE:

In the matter between:

H[...] J[...] P[...]	**Applicant**
and	
N[...] M[...] V[...]	**Respondent**

***Delivered**: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties I their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 23 February 2026*

JUDGMENT

RAUBENHEIMER, AJ

Order

1. The respondent is ordered to make payment to the applicant in the amount of R 2 018 003.23.

2. The respondent is ordered to make payment to the applicant of mora interest on the amount of R 5 605 562.23 from 1 November 2021 to 4 July 2023 and on the amount of R 2 018 003.23 from 5 July 2023 until date of payment.

3. The respondent shall pay the costs of the application on scale B.

Introduction

[1] The applicant and the respondent were married to each other out of community of property with the inclusion of the accrual. The marriage bond was dissolved by decree of divorce on 21 October 2021, incorporating a settlement agreement dated 23 September 2021. The respondent was the plaintiff and the applicant the defendant in the divorce action.

[2] During the subsistence of the marriage, the respondent was employed by Exxaro Resources Ltd until being retrenched on 30 April 2021. After his retrenchment and until he withdrew from the Exxaro Pension Fund 100% of the interest therein and 19% of (he interest in the Exxaro Provident Fund to make payment to the applicant, the respondent remained a member of the Exxaro Pension Fund and the Exxaro Provident Fund as a paid up member, the effect of which was that he remained a member except that no further contributions to the respective Funds were made by either the respondent or his previous employer.

[3] The application is for a money judgment for the payment of R 2 018 003.23 mora interest on the amount of R 5 605 562.23 from 21 November 2021 to 4 July 2023, and from 5 July 2023 on the sum of R 2 018 003.23 until date of payment.

[4] The basis for the claim is a breach of the settlement agreement incorporated into the decree of divorce.

[5] The respondent contends that on a proper interpretation of the settlement agreement, there was no breach of the agreement. The respondent, furthermore, contends that the applicant raises an implied or a tacit term in the settlement agreement. She raises this only in her replying affidavit, which is impermissible.

The provisions of the settlement agreement

[6] The applicable terms of the settlement agreement read as follows:

"6. PROPRIETARY SETTLEMENT

6.1 The parties agree and record that they are married to each other out of community of property subject to the accrual system in terms of Chapter I of the Matrimonial Property Act, 88 of 1984. The parties agree and record that the commencement values of their respective estates as at date of conclusion of the Antenuptial Contract was reflected at R Nil each and that neither party, save for gifts, donations and inheritances, excluded any assets from their marriage subject to the accrual system, to the effect that all assets either party [save for donations, gifts and inheritances they had before and/or after conclusion of the Antenuptial Contract] from their marriage subject to the accrual system.

6.2 The parties agree and record that they have determined and agreed on the amount of the difference in the accrual in the parties' respective estates due to the Defendant.

6.3 The parties agree and record that the Plaintiff is unable to effect payment of the total amount of the difference of the accrual in the parties' respective estates in a lump sum to the Defendant and as such, the parties agreed and record that payment will be made as follows:

…

6.5.1 A cash amount of R666,020.00 [Six Hundred and Sixty Eight Thousand and Twenty Rand] will be paid by the Plaintiff to the Defendant's attorneys [free of exchange or banking charges] on the date of signature of this agreement into the trust account of the Defendant's attorneys.

…

6.5.3 The Plaintiff shall, on the date of the signing of this agreement by both party, the "effective date" being the date when the last party signed this agreement, pay to the Defendant, without any deduction and/or bank charges, an amount of R3,400,000.00 [Three Million Four Hundred].

6.5.4.1 The Plaintiff is a member of Exxaro Pension Fund [membership number 3[...]] being administered by SANLAM. The parties agree and record that the Defendant is entitled to and awarded 100% [One Hundred Percentum] of the gross value of the Plaintiffs pension fund interest with Exxaro Pension Fund in terms of Section 37A(1) of the Pension Fund Act. 24 of 1956, calculated as at date of divorce.

6.5.4.2 For identification purposes and as proof of the gross value of the Plaintiff's 100% pension interest of Exxaro Pension Fund, a true copy of the current valuation thereof is attached hereto as NM1.

6.5.4.3 The Plaintiffs Exxaro Pension Fund (Membership Number 3[...]) being administered by Sanlam is ordered to effect an endorsement against the records of the aforesaid Pension Fund to the effect that Defendant is entitled to and awarded 100% of the Plaintiff's gross pension interest with Exxaro Pension Fund [Membership Number 3[...]].

6.5.4.4 The Plaintiff's Pension Fund, being ***Exxaro Pension Fund*** [Membership Number 3[...]1] being administered by Sanlam, pays to the Defendant 100% of the Plaintiff's gross pension interest in the said pension fund within the time period prescribed by the Pension Funds Act, 24 of 1956 read with the provisions of the Pension Funds Amendment Act, 11 of 2007;

6.5.4.5 The parties agree and record that the 100% interest in the Plaintiffs gross pension interests with Exxaro Pension Fund [Membership Number 3[...]] being administered by Sanlam be taxed in the hands of the Defendant on the tax scales/brackets applicable to the Defendant. The parties agree and record that no taxation of the 100% interest of the Plaintiffs gross pension benefit with Exxaro Pension Fund as administered by Sanlam shall be applicable to the Plaintiffs tax scales/brackets.

6.5.4.6 The parties agree and record that the Plaintiff shall obtain from Exxaro Pension Fund as administered by Sanlam all the necessary forms to effect the endorsements referred to above against his Pension Fund and submit same to the Defendant as per the rules and regulations of Exxaro Pension in terms of the Pension Funds Act. The Plaintiff shall ensure that he duly complies with the rules and regulations of the administrators of the Pension and Provident Fund and undertakes to submit all required information and documentation to effect the aforesaid endorsements.

6.5.4.7 The Plaintiff shall within 1 (one) month after decree of divorce being granted, provide the Defendant with all forms to ensure that the necessary endorsements be effected against the Exxaro Pension Fund as indicated above and provide Defendant with documentary proof that instructions to effect the endorsements have been given with the Exxaro Pension Fund in terms of the aforesaid paragraphs.

6.5.4.8 The Plaintiff undertakes to, on demand and should Exxaro Pension Fund require any further documentation and/or amplification of the aforesaid endorsement to be effected in favour of the Defendant, obtain same and comply with the provisions hereof.

6 6.1 The parties agree and record that the Plaintiff has a ***provident fund interest*** with Exxaro Provident Fund as administered by Sanlam. For identification purposes, of the nature and extent of the Plaintiffs Provident Fund interest with Exxaro, the parties refer to Annexure NM1 attached hereto.

6.6.2 The parties agree and record that the 19% interest in the Plaintiffs gross pension interest with Exxaro Provident Fund being administered by Sanlam, calculated as at date of divorce, will be payable to the Defendant and taxed in the hands of the Defendant on the tax scales/brackets applicable to the Defendant. The parties agree and record that no taxation of the 19% interest of the Plaintiffs gross provident fund benefit with Exxaro Provident Fund be applicable to the Plaintiffs tax scales/brackets.

6.6.3 The parties agree and record that the Plaintiff shall obtain from Exxaro Provident Fund all the necessary forms to effect the endorsements referred to above against his Provident Fund and submit same to the Defendant as per the rules and regulations of Exxaro Provident in terms of the Pension Funds Act. The Plaintiff shall ensure that he duly complies with the rules and regulations of the administrators of the Pension and Provident Fund and undertakes to submit all required information and documentation to effect the aforesaid endorsements.

6.6.4 The Plaintiff shall within 1 [one] month after decree of divorce being granted, provide the Defendant with all forms to ensure that the necessary endorsements be effected against the Exxaro Provident Fund as indicated above and provide Defendant with documentary proof that instructions to effect the endorsements have been given with the Exxaro Provident Fund in terms of the aforesaid paragraphs.

6.6.5 The Plaintiff undertakes to, on demand and should Exxaro Provident Fund require any further documentation and/or amplification of the aforesaid endorsement to be effected in favour of the Defendant, obtain same and comply with the provisions hereof."

Submissions by the parties

[7] At the time of the divorce, the value of the pension interest in the respondent's Exxaro Pension Fund amounted to R 4 496 335.45; and the value of the 19% held in the respondent's Exxaro Provident Fund amounted to R 1 109 226.77.

[8] The total amount due to the applicant in terms of the settlement agreement amounted to R 5 605 562.23 and became due and payable to the applicant one month after the date of the decree of divorce.

[9] The applicant approached the Pension Fund Adjudicator ("PFA"), who agreed with the respective Funds. The PFA further stated that as the settlement agreement

is binding between the applicant and the respondent, she could still pursue her claim directly against the respondent.

[10] The necessary forms were completed and signed by the parties, and the respondent instructed the relevant Funds to make payment who, despite demand, refused to make payment to the applicant in accordance with the settlement agreement. The basis for refusal was that as at the time of divorce, the respondent had already left the service of his employer the benefits in the respective Funds were excluded from the definition of a pension interest in terms of section 1 of the Divorce Act 70 of 1979 ("the Divorce Act").

[11] The refusal by the respective Funds to make payment prompted the respondent to make a withdrawal from the Funds, resulting in the Funds obtaining a tax directive to the effect of deducting tax at the rate applicable to the respondent, namely 36%. This was contrary to the provisions of the settlement agreement.

[12] The respondent paid to the applicant a total amount of R 3 587 599 being the sum of the 100% interest in the Exxaro Pension Fund, the amount of R 4 496 335.46, minus 36% tax of R 1 618 680.77 plus 19% of the interest in the Exxaro provident fund of R 5 838 035.64 being R 1 109 226.65 minus 36% income tax of R 399 321.59.

[13] The wording of the settlement agreement is not in dispute, and neither is it disputed that the applicant was entitled to payment in the amount of R 5 605 562.23 in terms of the settlement agreement. Neither of the parties have applied for a variation of the settlement agreement or any portion thereof. The applicant contended for the existence of an implied term in the settlement agreement but did not advance argument in this regard during oral argument or in her Heads of Argument.

[14] Both parties agree that the essence of the dispute is to be found in a proper interpretation of the settlement agreement.

[15] The respondent, in turn, contends that it was never the intention of the parties for him to make payment to the applicant in respect of his pension or provident fund. The intention, throughout, had been that the amounts were to be transferred directly from the respective Funds to the applicant and that the settlement agreement specifically provides as much.

[16] The respondent contends that he fully complied with the terms of the settlement agreement by signing and submitting the necessary forms to the Funds to effect payment of the settlement amount to the applicant.

[17] It was the Funds that failed to comply with the terms of the settlement agreement and not the respondent. The applicant failed to challenge this failure, which was the reason for the resultant non-payment of the settlement amount.

[18] The parties share the view that the essence of the matter is whether the respondent was obliged to make payment to the applicant in terms of the settlement agreement.

Discussion

[19] Although the applicant raised an implied term in her relying affidavit, she did not persist therewith in oral argument and neither did she address it in her Heads of Argument. It is consequently not necessary to be detained further by this aspect.

[20] The essence of the dispute boils down to whether the settlement agreement is open for an interpretation that the respondent bears the obligation to make payment to the applicant in the amount mentioned in the settlement agreement.

[21] The starting point of this enquiry, in accordance with the principles enunciated in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[1] are the purpose of the agreement, its language, the context of the particular provision and the material known to the parties.

[1] 2012 (4) SA 593 (SCA).

[22] The words of the agreement are to be interpreted in light of the context which includes the circumstances leading to the creation of the agreement,[2] and "a sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document."[3]

[23] The context of the agreement is that the accrual system, in terms of the Matrimonial Property Act,[4] was applicable to the marriage regime of the parties. Upon dissolution of the marriage, they had calculated that the applicant had a claim against the respondent in terms of the accrual system and agreed on the amount due to the applicant. They, furthermore, agreed that the respondent was not in a position to effect payment of the total amount and the payment of the difference would be effected in a specific manner.

[24] Firstly, the respondent had to transfer an immovable property to the applicant and pay a cash amount into the trust account of the applicant's attorneys.

[25] Secondly, the respondent was to transfer ownership of the vehicle used by the applicant to her as owner.

[26] Thirdly, the respondent had to pay a cash amount to the applicant on the effective date of the agreement.

[27] The last two payments dealt with the Pension Fund and the Provident Fund respectively. In this regard, the parties agreed that the applicant is entitled to and is awarded 100% of the respondent's gross pension interest in the pension fund. The parties agreed similarly in respect of the 19% of the Provident Fund interest. The parties, furthermore, agreed that no taxation of either of the mentioned amounts will be subject to the tax scales/brackets of the respondent. The respondent was, furthermore, obliged to comply with the rules and regulations of the respective funds.

[2] *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) at para 12.
[3] *Natal Joint Municipal Pension Fund* above n 1 at para 18.
[4] Act 88 of 1984.

He was consequently aware of the provisions of the respective funds and the effect of his retrenchment on the interest in the funds.

[28] The purpose of the settlement agreement was consequently to finalise the dissolution of the marriage. A specific portion of the agreement dealt with the patrimonial aspects of the dissolution and of which specific clauses dealt with the payment of the agreed amount. The parties agreed that the respondent was not in a position to make payment of the total agreed amount, and an elaborate and comprehensive payment scheme, in terms of which the respondent had to play an exceedingly active role in terms of which he bore the ultimate responsibility for the different modes of payment was to be implemented.

[29] To interpret the agreement in a manner that would absolve him from payment in respect of the last two payments would not only be insensible and unbusinesslike but would also undermine the purpose of the agreement. The conduct of the respondent is, furthermore, in conformity with such an interpretation.

[30] The argument that the applicant should have approached the respective funds for relief is a futile argument as the provisions of sections 7(7) and 7(8) of the Divorce Act do not find application where the pension benefit has accrued before the date of divorce.[5] There is currently no adequate legal framework covering a situation where a member of a fund exits the fund before the divorce in terms of which the pension fund could be obliged to pay to the applicant.[6]

[31] The applicant is thus not precluded from claiming directly from the respondent on the basis of the settlement agreement.[7]

[32] The parties specifically agreed on a particular tax regime in respect of the payments of the respective Fund benefits to be made to the applicant. The

[5] *Eskom Pension and Provident Fund v Kruger and Another* 2012 (6) SA 143 (SCA).
[6] *CNN v NN* 2023 (5) SA 199 (GJ).
[7] *MCM v MRM and North-West University Pension Fund* [2014] ZANWHC 31.

deductions made by the respective Funds do not alter the respondent's liability in terms of the settlement agreement and he is consequently liable in terms thereof.[8]

Conclusion

[33] Based on the above reasons, the following order is made:

1. The respondent is ordered to make payment to the applicant in the amount of R 2 018 003.23.
2. The respondent is ordered to make payment to the applicant of mora interest on the amount of R 5 605 562.23 from 1 November 2021 to 4 July 2023 and on the amount of R 2 018 003.23 from 5 July 2023 until date of payment.
3. The respondent shall pay the costs of the application on scale B.

E RAUBENHEIMER
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

For the Applicant:	Adv Coetzee instructed by Gilfillan Du Plessis Attorneys
For the Respondent:	Adv Hollander instructed by Alice Swanepoel Attorneys
Date of hearing:	16 October 2025
Date of judgment:	23 February 2026

[8] *Petrus v Berdina* [2015] ZAGPPHC 802.