

REPUBLIC OF SOUTH AFRICA



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

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: ~~YES~~/NO

CASE NUMBER: 42286/19

15 April 2026

DATE

SIGNATURE

In the matter between:

REALTIME TRADING AND PROJECTS CC

APPLICANT

And

JORDINAMIX (PTY) LTD

FIRST RESPONDENT

TEFO MALOISANE

SECOND RESPONDENT

Heard: 5 March 2026

Delivered: 15 April 2026

JUDGMENT

WINDELL J:

[1] This is an application in terms of Rule 41(4) of the Uniform Rules of Court to have a written settlement agreement made an order of court.

[2] The relevant facts are largely common cause. The applicant, Realtime Trading and Projects CC instituted action against the respondents, Jordinamix (Pty) Ltd and Mr Tefo Maloisane, during 2019. During June 2021 the parties, both legally represented, concluded a written settlement agreement which resolved the dispute between them. The agreement was reduced to writing and signed by both parties.

[3] In terms of the agreement the respondents acknowledged their indebtedness to the applicant and undertook to pay the settlement amount in instalments. The respondents also undertook to pay the applicant's taxed costs arising from the litigation.

[4] It is not disputed that the respondents performed partially in terms of the settlement agreement. They paid the taxed costs and the first instalment of R500 000. It is also not disputed that they thereafter failed to make the subsequent payment of R750 000, which became due on 31 December 2022.

[5] In terms of the settlement agreement, the respondents' failure to make payment of the instalment due rendered the full outstanding balance, together with accrued interest, immediately due and payable. The present application was accordingly instituted only after that default had occurred.

[6] The principal defence raised by the respondents is that there was a common mistake regarding clause 14 of the settlement agreement which reads as follows: 'The

parties hereby consent to this Settlement Agreement being made an order of Court'. According to the respondents, the clause was intended to mean that the settlement agreement could only be made an order of court with the written consent of both parties.

[7] This defence is untenable. A common mistake is 'where the parties share the same mistake, they are in complete agreement, but their consensus ad idem is based on a common, false supposition that a certain state of affairs exists'.¹ In order to succeed, the respondents must therefore demonstrate that both parties laboured under the same mistaken assumption at the time the agreement was concluded.

[8] Firstly, it is not in dispute that a valid settlement agreement was concluded between the parties. The consensus between them to enter into the agreement and to resolve the action is therefore common cause.

[9] Secondly, the respondents' own conduct further contradicts the alleged mistake. They performed in terms of the agreement by paying both the taxed costs and the first instalment of R500 000. Such conduct is inconsistent with the suggestion that the agreement did not reflect the parties' true intention.

[10] Thirdly, the respondents have failed to establish the requirements for rectification. A party seeking rectification must demonstrate that the written document does not correctly record the common intention of both parties. The respondents have placed no evidence before this court demonstrating that the applicant shared the alleged

¹ *Wille's Principles of South African Law*, 9th Edition 8 page 750. See also *In Loco Parts (Pty) Ltd t/a ACA Clutch v Turners Shipping (Pty) Ltd* 2008 (1) SA 279 (W) paragraph 21.

assumption they now rely upon. A bald allegation that the clause was understood differently does not establish a common mistake. In these circumstances, no proper case for rectification arises on the papers, and the respondents' contention that the application is not ripe for hearing cannot be sustained.

[11] At best for the respondents, what is suggested is a unilateral misunderstanding of the effect of a clause. That does not constitute a common mistake and does not provide a basis for rectification.

[12] Importantly, the correspondence emanating from the respondents' own attorneys dated 8 June 2021, shortly after the agreement was signed, does not support the version now advanced. Instead, it records a proposed amendment that the agreement could be made an order of court *in the event of breach*. That proposal was not accepted, and the original agreement remained in force.

[13] The suggestion that clause 14 is ambiguous or uncertain is thus not borne out by the language of the agreement. In any event, a difference in interpretation does not, without more, establish a common mistake or justify rectification.

[14] The further submission that this court would be 'devising a fresh pact' by making the settlement agreement an order of court is equally without merit. The court is not altering the agreement or supplementing its terms. It is simply enforcing the agreement concluded by the parties in accordance with rule 41(4).

[15] Against that backdrop, the chronology of this matter assumes particular significance. It underscores the extent to which the respondents have, over a prolonged

period, failed to honour the agreement while advancing defences inconsistent with their own conduct.

[16] The action was instituted in November 2019. A settlement agreement was concluded as early as June 2021. The respondents made partial payment in December 2021, but failed to comply with their further obligations by December 2022. The present application was instituted in February 2023. Thereafter, the matter followed a protracted procedural path, including opposition, the filing of affidavits during 2023, difficulties in finalising a joint practice note, and postponements at the instance of the respondents. During this period, the respondents' attorneys withdrew, further contributing to the delay, and the respondents had to be compelled by way of interlocutory proceedings to file their heads of argument. Notably, on 5 March 2026, attorneys came on record for the respondents for the limited purpose of attending to the taxation of the bill of costs only, and not for the conduct of these proceedings. The matter was ultimately only heard on 5 March 2026.

[17] In these circumstances, this is not a matter arising from any uncertainty in the agreement or any contemporaneous dispute as to its terms. It concerns a clear and binding settlement agreement that has, for several years, not been honoured. The respondents have sought, only after default and during protracted litigation, to avoid its consequences.

[18] The amount claimed is supported by a certificate of balance issued in terms of the settlement agreement, which constitutes prima facie proof of the respondents' indebtedness. The respondents have not meaningfully challenged that calculation.

[19] The requirements of Rule 41(4) are therefore met. The settlement agreement was reduced to writing and signed by the parties; it settled the action in its entirety; the proceedings were not withdrawn; and the agreement has not been carried out. In those circumstances, the applicant is entitled to judgment in terms of the settlement agreement.

[20] In the result the following order is made:

1. The settlement agreement concluded between the parties on 7 June 2021 is made an order of court.
2. Judgment is granted against the respondents, jointly and severally, the one paying the other to be absolved, in the amount of R1 525 307.72, together with interest thereon at 10.5% per annum from 7 February 2023 to date of payment.
3. The respondents are ordered to pay the costs of this application on attorney and client scale.



L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 15 April 2026.

APPEARANCES

For the applicant:	C Chiang
Instructed by:	Faber Goertz Ellis Austen Incorporated
For the respondents:	In person
Date of hearing:	5 March 2026
Date of judgment:	15 April 2026