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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 071753/2023

(1) REPORTABLE:

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED:

DATE

SIGNATURE

In the matter between:

DOOR-O-MATIC CC t/a TIGHT FIT GARAGE DOORS

Applicant

(Registration number: 1999/026668/23)

and

T D MOTOR MANIA PTY LTD

First

Respondent

(Registration number: 2013/148278/07)

INSPECTACAR FINANCE, a product of Wesbank,

a division of Firststrand Bank Limited

Second

Respondent

(Registration number: 1929/001225/06)

JUDGMENT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 8 April 2026.

WELGEMOED, AJ

- [1] This is an opposed application that was set down for hearing on the opposed motion roll for 24 November 2025 wherein I reserved judgment. The applicant sought, *inter alia*, the following relief in its original notice of motion:

"1. Confirmation of cancellation of the sale agreement entered into between the applicant and the first respondent, in respect of the motor vehicle known as HONDA CRV 2.2 DTEC ELEGANCE

(ENGINE NUMBER: N[...], CHASSIS NUMBER: S[...]) ("the motor vehicle");

2. *Confirmation of the cancellation of the agreement entered into between the applicant and second respondent, as financier of the sale agreement."*

[2] The first respondent opposed the relief and the applicant filed a replying affidavit. The matter proceeded on 16 May 2024.

[3] On 16 May 2024 the following order was made by the Court:

"1. The matter is referred for the hearing of oral evidence, at a time to be arranged with the Registrar, on the following point only:

1.1 Whether or not there was a settlement reached between the attorney acting on behalf of the applicant, Mr Johan Eksteen and the attorney acting on behalf of the first respondent, Ms Thelma Mphahlele which settlement intended to have brought an end to the litigation between the parties.

2. The evidence shall be that of Mr Johan Eksteen and Ms Thelma Mphahlele.

3. *Within 20 (twenty) days of the making of this order, the applicant and the first respondent shall make discovery, on oath, of any documents relating to the issue referred to oral evidence, on which they wish to rely at the hearing of such oral evidence, if the parties wish to do so.*
4. *Such discovery shall be made in accordance with Uniform Rule 35 and the provisions of that rule with regards to the inspection and production of documents discovered shall be operative.”*

BACKGROUND:

- [4] The Court is therefore called to make a factual finding, on a balance of probabilities, after hearing the oral evidence of the two witnesses, on whether a settlement was reached between the parties.
- [5] In essence, this would only decide the relief as sought against the first respondent in the original notice of motion and would not affect the rights of the second respondent if granted.
- [6] At the outset of the hearing of the oral evidence, the parties agreed that the existence or not of the alleged settlement, would not in law affect the rights of the second respondent *vis-a-vis* the applicant.
- [7] The applicant and first respondent further filed affidavits setting out their version of events, which is set out hereunder.

[8] This matter was set down for hearing on the opposed motion roll before the Honourable Strydom AJ, for the week of 6 May 2024 and allocated for hearing on 9 May 2024.

[9] The parties commenced with argument on Thursday 9 May 2024 and at some stage during argument the parties were requested to see the Honourable Strydom AJ in chambers.

[10] The consequence of that was that the legal representatives attempted to settle the matter and to some extent the parties were proverbially "close to each other" in respect of a settlement agreement.

[11] The application then stood down for possible settlement. On Saturday, 11 May 2024 at 12h18, Mr. De Swardt from the applicant received a text message from the first respondent requesting him to obtain settlement figures from Wesbank as they wanted to settle. The message read as follows:

"Mnr de Swart kan u asb 'n

aflosbedrag trekby

Wesbank en stuur vir

Juan Inspectacar, ons

kyk na 'n skikking soos

voorgestel deur die hof.”

- [12] On Monday, 13 May 2024, the attorney of record for the applicant, Mr Eksteen, received a call from the first respondent's attorney of record, Ms. Mphahlele in which she requested to obtain settlement figures from the second respondent as well as a breakdown of all of the expenses the applicant has paid in respect of the motor vehicle.
- [13] The requested information was provided by WhatsApp to the first respondent's attorney of record at around 09h19. These documents are referred to as annexure “SA4” and “SA5” respectively. Annexure “SA4” depicts the settlement amount of R 204 603.97 owing towards the second respondent and the expenses as per annexure “SA5” amounting to R 139 088.02 that the applicant incurred to date thereof.
- [14] The first respondent's attorney of record replied by acknowledging receipt of the documentation and that she would forward same to the first respondent at 09h30 of the same morning.
- [15] At approximately 10h00, the applicant's attorney of record received a call from the first respondent's attorney of record by stating that the matter has become settled. This is disputed by the first respondent's attorney of record.

[16] At 13h42 the applicant's attorney of record received the following WhatsApp message from the first respondent's attorney of record:

"Good day

Now the client is not willing to settle.

Let's advise the Judge and argue the matter on Wednesday

M tired of their tantrums"

EVIDENCE OF EKSTEEN:

[17] Mr. Eksteen testified on behalf of the applicant as per the order as set out above. Mr. Eksteen is an adult male attorney, duly admitted and practising as such for a period of approximately 13 years.

[18] During or about 2023, Mr. Eksteen was contacted by the applicant to render legal assistance in relation to the present dispute. Mr. Eksteen has been involved in this matter from its inception and is accordingly fully apprised of the relevant facts and procedural developments which are set out above.

[19] Further, it was testified that the applicant purchased a motor vehicle in Johannesburg from the first respondent. The said vehicle was thereafter

transported to Pretoria and subsequently to Cape Town. Upon collection of the vehicle in Cape Town by the applicant, and whilst travelling to Strand, warning lights appeared on the vehicle. The applicant stopped the vehicle and arranged for it to be inspected. The vehicle was thereafter referred to a workshop, and further engagements took place with technicians, including representatives associated with Honda in Strand.

[20] Additional investigations were conducted, including investigations by an individual named Jimmy from Advanced Auto Electricians. Owing to ongoing and abnormal issues with the vehicle, correspondence was sent on behalf of the applicant calling upon the first respondent either to repair the vehicle or to cancel the agreement. A letter of demand was subsequently dispatched and at that stage, the applicant was no longer in possession of the vehicle.

[21] The matter proceeded to litigation and was enrolled for hearing and heard by the Honourable Strydom AJ, on 9 May 2024. During argument, proceedings were interrupted and stood down. Discussions took place in chambers, during which the issue of whether the applicant was in possession of the vehicle arose. It was indicated that this aspect would be withdrawn or clarified, with the position being that the applicant was not in possession of the vehicle. The Honourable Strydom AJ indicated that the matter should stand down to afford the parties an opportunity to explore settlement.

- [22] A virtual consultation was accordingly arranged for 13 May 2024 between the parties. The matter formally stood down to 16 May 2024.
- [23] On the morning of 13 May 2024, Mr. Eksteen awaited a settlement agreement. At approximately 09h19, documentation was forwarded to the Respondent's attorney of record being the settlement. A settlement meeting was scheduled for 10h00.
- [24] At approximately 09h30, receipt of the documentation was acknowledged by Ms. Mphahlele. Shortly before the scheduled meeting, at approximately 09h55, Mr. Eksteen received a telephone call during which he was informed that the matter had been settled by Ms. Mphahlele. It was conveyed to me that an agreement had been reached on the documents then before the parties. The issue of costs remained unresolved and was to follow the result, alternatively to be determined by the Court.
- [25] At approximately 13h41 on 13 May 2024, further documents were forwarded by the first respondent's attorney of record stating that the first respondent does not want to settle.
- [26] There was no real version put to this witness by counsel for the first respondent. Under cross examination, the only matter that was dealt with is the issue of costs that was not dealt with in any detail by the parties

according to Mr. Eksteen. In this respect Mr. Eksteen stated that the parties agreed that costs would be argued and for the court to decide.

EVIDENCE OF MPHAHLELE:

[27] Ms Mphahlele testified that, on or about 9 May 2024, the matter was discussed in the context of possible settlement. Ms. Mphahlele at that stage, conveyed that the matter could potentially be settled and requested the relevant settlement documentation. However, the matter could not immediately be settled as she required further instructions, including consultation with other directors.

[28] On 13 May 2024 at approximately 09h55, she indicated that she would consider the documents and revert once proper instructions had been obtained. Referring to the documents received regarding the settlement figures. Ms. Mphahlele further testified that any proposal remained subject to final instructions, that the issue of costs had not been addressed and no written or signed settlement agreement came into existence. Mention was also made of further communication later in the day, including via WhatsApp.

[29] I must pause to state that the evidence in chief of this witness failed to address pertinent factual issues raised by the applicant, and that the majority of the evidence of Mr. Eksteen was left uncontested.

[30] Under cross-examination, Ms Mphahlele confirmed that she was actively involved in settlement discussions during May 2024. It was accepted that on 9 May 2024, the first respondent was not willing to settle and that settlement figures were only requested at a later stage, including on or about 13 May 2024. She testified that the client required further instructions before any agreement could be concluded. It was also testified that communications were exchanged, including via WhatsApp on 13 May 2024, a meeting had been scheduled for purposes of settlement discussions and that documents would be considered and that she would revert regarding possible settlement.

[31] It was further testified that Ms. Mphahlele contacted Mr Eksteen at approximately 09h55 and indicated that she would revert after considering the documentation. It was put to her that the parties were in the process of settling and she accepted that discussions were ongoing but maintained that no agreement was concluded.

[32] Another issue emerged in her testimony regarding Ms. Mphahlele not being authorised to settle the matter on her own, which issue was never put to Mr. Eksteen nor raised previously. As such evidence does not form part of the dispute and is not considered by the Court. Ms. Mphahlele in any event, was the attorney of record, engaged in settlement negotiations and requested settlement figures and communicated the settlement

outcome. Even if this defence is considered, the probabilities establish authority to bind the first respondent.

- [33] The content of the annexures was not disputed and confirmed by the witness. In response to questions from the Court, Ms Mphahlele indicated that the parties had discussed that costs might stand over and the issue of costs remained unresolved at the time of the discussions. However, settlement had not been finalised pending further instructions. It was also testified that her mandate was to act on instructions, and she did not have authority to conclude a settlement without such instructions.

THE DISPUTE:

- [34] In civil proceedings, proof is furnished upon a balance of probabilities. For the applicant to succeed, the probabilities must be substantially in his favour, see *Eversmyer v Walker* 1963 (3) SA386 (T); *Blyth v Van Den Heever* 1980 (1) SA 220 (A).

- [35] The central issue in dispute arises from a telephone call which took place at approximately 09h55 on 13 May 2024, shortly before the scheduled meeting. Mr Eksteen testified that he received a call from Ms Mphahlele during which she conveyed words to the effect that she had “good news” and that the matter had been settled on the documents then before the parties. According to Mr Eksteen, it was further indicated that the issue of

costs remained outstanding and would either follow the result or be determined by the Court.

[36] Ms Mphahlele, on the other hand, testified that she communicated that she would consider the documents and revert once proper instructions had been obtained.

[37] The Court is required to determine, on a balance of probabilities, whether the parties had reached an agreement on the material terms of settlement at that stage, notwithstanding that certain aspects, including costs, remained unresolved and no written agreement had been signed. These terms are reflected in annexure "SA4" and SA5" being the cancellation of the agreement, the payment of the settlement amount and that of expenses.

[38] Upon, evaluating the probabilities and credibility of the witness's testimony I am of the view that Mr. Eksteen version is clear, time-specific and commercially sensible. I am also reminded that the majority of the evidence of Mr. Eksteen was left uncontradicted and as stated by Claassen J in ***Small v Smith*** 1954 (3) SA 434 (SWA) at 348:

"It is, in my opinion, elementary and standard practice for a party to put to each opposing witness so much of his own case or defence as concerns that witness, and if need be, to inform him, if he has not been given notice

thereof, that other witnesses will contradict him, so as to give him fair warning and an opportunity of explaining the contradiction and defending his own character. It is grossly unfair and improper to let a witness's evidence go unchallenged in cross-examination and afterwards argue that he must be disbelieved.

Once a witness's evidence on a point in dispute has been deliberately left unchallenged in cross-examination and particularly by a legal practitioner, the party calling that witness is normally entitled to assume, in the absence of notice to the contrary, that the witness's testimony is accepted as correct. More practically, if this is the case the witness is corroborated by several others, unless the testimony is so manifestly absurd, fantastic or of so romantic a character that no reasonable person can attach any credence to it whatsoever."

- [39] The evidence of Ms. Mphahlele was however, always qualified by retrospective explanations and internally inconsistent, for example engaging in settlement discussions while denying authority to do so. It was also not seriously denied that Ms. Mphahlele used the words "*Johan I have good news*" and the subsequent conduct of the parties indicated that there was then no need to proceed with the meeting to be held at 10h00. The later WhatsApp stated that "*Now the client is not willing to settle..*" that was only sent at 13h41. A party cannot unilaterally resile once an agreement is reached. These uncontested facts demonstrate that as at

9:55 there was in fact an agreement reached. There was a clear acceptance of the material terms with authority to act by Ms. Mphahlele. The version of Mphahlele does not directly deny these material aspects of the parties conduct.

[40] Both parties also agreed that costs remained unresolved and costs are not always a material term. Courts often accepts terms such as “*costs to follow the result*” or that costs are left to the Court.

[41] I am of the view that costs should follow the result in the matter.

ORDER:

[42] Consequently, I make the following order:

1. A settlement was reached and is made an order of Court in terms of which the parties agreed, in order to end the litigation in respect of the vehicle, as follows:
 - 1.1 Confirmation of cancellation of the sale agreement entered into between the applicant and the first respondent, in respect of the motor vehicle known as HONDA CRV 2.2 DTEC ELEGANCE (ENGINE NUMBER: N[...], CHASSIS NUMBER: S[...]) ("the motor vehicle");

- 1.2 The first respondent shall pay the amount of R 204 603.97 towards the settlement of the finance agreement with the second respondent;
 - 1.3 The first respondent shall pay to the applicant the amount of R 139 088.02 in respect of expenses incurred in respect of the motor vehicle.
 - 1.4 Costs to be reserved for adjudication by the Court.
2. The first respondent is ordered to pay the costs of the application on Scale B.

WELGEMOED CJ
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Date of Hearing: 24.11.2025

Date of Judgment: 8.04.2026

Counsel for Applicant: Adv A Van Der Merwe

Counsel for Respondents: Adv Mello

