IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case no: 23109/17

In the matter between:

C[...] K[...] P[...] PLAINTIFF

and

R[...] A[...] P[...] DEFENDANT

Neutral citation:

Coram: Mgengwana; AJ

Heard: 26 March 2026

Delivered: 13 May 2026

Summary: Divorce – Decree incorporating terms of Settlement Agreement – Alleged Breach of a term of the Settlement Agreement – Interpretation - Enforcement of a term of the Settlement Agreement.

ORDER

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[1] In the result, I grant the following order:

[1.1] The Registrar of this Court directed to issue a writ of execution in favour of the Applicant for an amount of R55 786.65 plus interest on this amount calculated from 28 December 2024 to date of final payment.

[1.2] The Sheriff of Wynberg North is directed to attach and take into execution the movable goods of the Respondent at Flat No. 4[...], The R[...], B[...] Road, Rondebosch and cause to be realized by public auction the sum of R55 786.65 plus interest on this amount at 11.75% per annum calculated from the 28th of December 2024 to date of final payment, the costs of the application and costs of the execution of the order granted.

[1.3] The Sheriff of Wynberg North is directed to pay the Applicant or her attorney the sum due in terms of the paragraph above with costs.

[1.4] The Respondent is ordered to pay the costs of this application including the costs of counsel on Scale B.

JUDGEMENT

MGENGWANA; AJ

Judgement handed down: The judgement is handed down electronically by circulating to the parties or legal representatives by email. The date for the handing down of the judgment is deemed to be 13 May 2026.

Introduction

[1] This is an application in which the Applicant is seeking an Order on the following terms:

(a) Directing the Registrar of this Court to issue a writ of execution in favour of the Applicant for an amount of R55 786.65 plus interest on this amount calculated from 28 December 2024 to date of final payment.

(b) Directing the Respondent to pay the costs of this application.

(c) Directing and authorizing the Sheriff of Wynberg North to attach and take into execution the movable goods of the Respondent at Flat

No. 4[...], The R[...], B[...] Road, Rondebosch and cause to be realized by public auction the sum of R55 786.65 plus interest on this amount at 15.5% per annum calculated from the 28th of December 2024 to date of final payment, the costs of the application and costs of the execution of the order granted.

(d) The Sheriff of Wynberg North is directed to pay the Applicant or her attorney the sum due in terms of paragraph (c) above with costs.

Background

[2] On 21 August 2019 this Court granted a divorce decree dissolving the marriage between the Applicant and the Respondent. The divorce decree incorporated a Settlement Agreement which was signed by both the Applicant and the Respondent on 15 July 2029.

[3] The material terms of the Settlement Agreement relevant to this application are as follows:

(a) The Plaintiff, the Applicant in these proceedings, shall retain the motor vehicle currently in her possession for which the Plaintiff will be responsible for maintenance, including service, tyres and fuel.

(b) The Defendant, the Respondent in these proceedings, shall make 50% of the monthly instalments in the amount of R2 657.00 (Two Thousand Six Hundred and Fifty Seven Rand) on the vehicle referred to above until the expiry of the finance agreement on the motor vehicle, such amount to be paid monthly by the 28th of each consecutive month until expiry of the finance agreement.

[4] There is no allegation that the Respondent defaulted on any of the R2 657.00 payments however, on 24 October 2024 and via her attorneys of record at the time, the Applicant wrote to the Respondent to inform him of his obligation to pay a final instalment of R55 786.65 which is 50% of a "balloon payment" of R111 573.30 the Applicant is obliged to pay in terms of the finance agreement. The Respondent neither responded to the aforementioned letter nor made the payment of R55 786.65. Because of the inaction of the Respondent, the Applicant approached the Registrar of this Court on 21 January 2025 to obtain a writ of execution for the amount of R55 786.65. However, the Registrar declined to issue the writ of execution because according to the Registrar, the settlement agreement "does not clearly make provision for the amount and reason for which the writ is sought, as referred to in paragraphs 6.2 and 6.3."

[5] Based on the Registrar's response, the Applicant approached this Court with an application that seeks the orders outlined in paragraph 1 of this judgement. The application is opposed by the Respondent.

Issues to be determined

[6] This Court is being called upon to make a determination on what is the meaning of the words "until the expiry of the finance agreement on the motor vehicle" within the context of this particular case. If the "balloon

payment" falls squarely within the four corners of the finance agreement, then the Respondent will be liable for the payment of 50% of the "balloon payment" but if it does not, then he will escape liability.

Submissions made by Applicant

[7] Applicant's counsel seeks, in the main, to rely on an email sent by Respondent to Applicant on 5 May 2025 wherein he said the following:

> "Chantal, how much is the bubble payment on the car? I left the legal papers in Cape Town. I'm going to pay it. I really don't have money or energy to spend on more lawyers' bills, when I have parents and kids who need support"

Applicant's counsel submitted in his Heads of Argument that the contents of the aforementioned email constitute an admission by the Respondent that he, in fact, owes the Applicant the money for the "balloon payment".

[8] In addition to the above, counsel for the Applicant submitted that the test for "expiry of the finance agreement" turns on the ordinary meaning and commercial context. The finance agreement "expires" only when all obligations under it are discharged, including any residual or "balloon payment".

[9] Counsel for the Applicant further submitted that Respondent's interpretation – limiting liability to the monthly instalments – ignores the plain wording and defeats the evident purpose of the clause, which was to ensure shared responsibility "until expiry". The operative phrase "until the expiry of the finance agreement" imports continuation of the Respondent's

payment obligation until the finance contract is fully extinguished. Removing the “balloon payment” from the shared obligation renders the phrase meaningless. The reference to “in the amount of R2 657.00” identifies the monthly rate of performance, not ceiling on total liability. The parties tied the Respondent’s obligation to the duration of the finance contract, not to a fixed sum.

Submissions made by Respondent

[10] Mr. Nel, who appeared for the Respondent, strenuously objected to the admission of the email of 5 May 2025. He argued that the email was only brought to the court’s attention in the Applicant’s Replying Affidavit and is therefore a “new matter”, besides constituting a new matter, it was never contextualized. Respondent submitted that this email was preceded and followed by numerous emails which were never brought to the attention of this Court.

[11] He also submitted that the Deed of Settlement explicitly and unambiguously provided that the Respondent would only be liable for one half of the monthly instalments for the motor vehicle in a specified amount. He further stated that the Respondent was not liable for half of the residual/ balloon payment at the end of the finance terms, as is currently being claimed.

[12] He also submitted that from the wording of clause 6.3 it was clear that the Respondent had only undertaken to pay 50% of the monthly instalments

in a specified amount of R2 657.00 until the expiry of the finance agreement and nothing more. There was no reference in the Deed of Settlement that the Respondent agreed to pay any portion of the final balloon/residual payment of R111 642.20. He submitted further that the instalment sale agreement clearly stated that there were seventy-one (71) monthly instalments of R5 312.73 for which the Respondent was only liable for 50% thereof.

Applicable Law

[13] Madlanga J stated in in *Eke v Parsons* that once a settlement agreement has been made an order of court, it is an order like any other and that it will be interpreted like all court orders. He further elaborated that this is equally true of court orders following settlement agreements.[1]

[14] Wallis, JA stated the following when discussing the law with regards to interpretation in *Natal Joint Municipal Pension Fund v Endumeni Municipality*:

" The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one

[1] *Eke v Parsons* 2016 (3) SA 37 (CC) at para 29 and 30

that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."[2]

[15] After citing the above passage with approval Khampempe J held as follows in *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC):

"[65] This approach to interpretation requires that "from the outset one considers the context and the language together, with neither predominating over the other". In Chisuse, although speaking in the context of statutory interpretation, this Court held that this "now settled" approach to interpretation, is a "unitary" exercise. This means that interpretation is to be approached holistically: simultaneously considering the text, context and purpose.
[66] The approach in Endumeni "updated" the previous position, which was that context could be resorted to if there was ambiguity or lack of clarity in the text. The Supreme Court of Appeal has explicitly pointed out in cases subsequent to Endumeni that context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous. A court interpreting a contract has to, from the onset, consider the contract's factual matrix, its purpose, the circumstances leading up to its conclusion, and the knowledge at the time of those who negotiated and produced the contract."[3]

[16] In *Capitec Bank Holdings Limited v Coral Lagoon Investments Ltd 194* Unterhalter AJA, as he then was, stated the following after making it clear that the point of departure as was stated in the Endumeni case is the language of the provision itself:

[2] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at par 18 F
[3] *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC)

"[26] None of this would require repetition but for the fact that the judgment of the High Court failed to make its point of departure the relevant provisions of the subscription agreement. *Endumeni* is not a charter for judicial constructs premised upon what a contract should be taken to mean from a vantage point that is not located in the text of what the parties in fact agreed. Nor does *Endumeni* license judicial interpretation that imports meanings into a contract so as to make it a better contract, or one that is ethically preferable."[4]

[17] It is clear from the cases cited above that this Court is enjoined to take context, purpose, the factual matrix and circumstances leading to the conclusion of the agreement into cognizance when interpreting a settlement agreement, irrespective of whether the wording of the agreement itself is equivocal or not.

[18] Bam J briefly described a "balloon payment" as follows in *BMW Financial Services South Africa v Liebenberg* which is a North Gauteng High Court judgement delivered on 9 June 2025:

"[8] A balloon payment refers to a portion of a loan that is deferred until the end of the loan term. The consumer typically does not make payment towards this portion. However, they will be required to make one final payment which is usually significantly larger than the installments paid during the term". [5]

Discussion and findings

[19] First and foremost, this Court deems it necessary to dispose of the

[4] *Capitec Bank Holdings Limited v Coral Lagoon Investments Ltd 194* 2022 (1) SA 100 (SCA)
[5] *BMW Financial Services South Africa v Liebenberg*

issue of an alleged admission made by the Respondent in his electronic mail of 5 May 2025. As stated previously in this judgement, this alleged admission was only raised in the Replying Affidavit of the Applicant and naturally, the Respondent objected to the introduction of this email as he submitted that it contained a new matter. To deal with the alleged "new matter", the Respondent prepared and filed an application to Strike Out the alleged new matter and he also prepared and filed an application to file a further affidavit in terms of Rule 6(5)(e) of the Uniform Rules of this Court. However, on the morning of hearing this matter, counsel for the Applicant indicated to Court that he will make no reference to the new matter raised in the Replying Affidavit and that this Court does not have to make a ruling in respect thereof. This Court shall therefore not make a pronouncement with regards to the application to strike out and the application in terms of Rule 6(5)(e).

[20] The following facts are common cause:

(a) A Divorce Order incorporating the terms of a Settlement Agreement of 15 July 2019 was granted on 21 August 2019.

(b) When this Settlement Agreement was entered into, the Applicant had already entered into a finance agreement with regard to the vehicle which is the subject of this case, such finance agreement was entered into on 8 December 2018.

(c) The duration of the finance agreement was from 7 December 2018 to 25 December 2024.

(d) The finance agreement had 72 instalments consisting of 71 instalments of R5 312.73 each and one instalment of R111 642.20. This Court therefore does not accept the submission made by the attorney for the Respondent that the finance agreement had only seventy instalments.

(e) Nothing was specified in the agreement with regard to the last instalment of R111 642.00 and no explanation has been given by either of the parties in connection with this omission.

(f) The words “until the expiry of the finance agreement” has been used twice in paragraph 6.3 of the Settlement Agreement while the amount of R2657.00 has only been used once.

(g) The central issue is whether the Respondent is liable for payment of 50% of the amount of R111 642.20.

(h) Attorney for the Respondent made no attempt to furnish this Court with his interpretation of the words “until the expiry of the finance agreement”.

[21] The duration of the finance agreement, as previously stated, is seventy-two months with the last instalment being a “balloon payment”. This must have been well known by both parties at the time the settlement agreement was entered into as the finance agreement preceded the settlement agreement and the divorce. Therefore, the finance agreement is the context within which clause 6.3 was negotiated and concluded. If there was ever an

intention to exclude any of the instalments of the finance agreement, this would have been expressly stated at clause 6.3 as it would have been out of sync with its tone. This tone placed an emphasis on the words "until the expiry of the finance agreement" rather than the monthly amounts payable. This is evidenced by the fact that these words are used twice in the same clause. Based on the above, this Court finds that the drafters of the settlement agreement resolved to place emphasis on the payment duration rather than the monthly amount payable.

[22] Therefore, based on the plain and unequivocal language used in the formulation of clause 6.3, the circumstances in existence at the time at was negotiated and agreed to (the terms existing finance agreement) and the purpose thereof (to pay 50% until the expiry of the finance agreement), this Court finds that the Respondent is indeed liable for 50% of the seventy second instalment, being the balloon payment which is part and parcel of the finance agreement.

[23] As previously stated, clause 6.3 of the settlement agreement does not specifically exclude the seventy-second instalment. If Respondent believed that he was only liable for seventy-one of the seventy-two instalments, then he misled himself as clause 6.3 does not provide for payment of only seventy-one instalments out of the seventy-two but it provides for payment for the duration of the entire finance agreement which must mean all seventy-two instalments regardless of the amount payable on the final instalment.

[24] The Court has also noted that the text of the finance agreement itself

makes no mention of an “Additional “Balloon Payment” of R111 573.30” as submitted by Mr. Nel, it only makes mention of a payment of R111 642.20 commencing on 25 December 2024. Therefore, the submission that the payment of 50% of the aforementioned amount by the Respondent will be in addition to his monthly amounts of R2 657.00 is unfounded and stands to be rejected as it is not supported by either the texts of the finance agreement or the settlement agreement.

[25] In the result, I grant the following order:

[25.1] The Registrar of this Court directed to issue a writ of execution in favour of the Applicant for an amount of R55 786.65 plus interest on this amount calculated from 28 December 2024 to date of final payment.

[25.2] The Sheriff of Wynberg North is directed to attach and take into execution the movable goods of the Respondent at Flat No. 4[...], The R[...], B[...] Road, Rondebosch and cause to be realized by public auction the sum of R55 786.65 plus interest on this amount at 11.75% per annum calculated from the 28th of December 2024 to date of final payment, the costs of the application and costs of the execution of the order granted.

[25.3] The Sheriff of Wynberg North is directed to pay the Applicant or her attorney the sum due in terms of the paragraph above with costs.

[25.4] The Respondent is ordered to pay the costs of this application including the costs of counsel on Scale B.

TJ MGENGWANA
Acting Judge of the High Court

APPEARANCES:

For the Applicant:	Mr. C. Burke
Instructed by:	Kudo Law
	Mr. R. Kudo
For the Respondent:	Springler-Nel Attorneys
	Per: Mr. A. Nel