



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A200/2024

In the matter between

MATJHABENG LOCAL MUNICIPALITY

APPLICANT

AND

LEQUBU SPECIALISED SERVICES (PTY) LTD

RESPONENT

Neutral citation: *Matjhabeng Local Municipality v Lequbu Specialized Services (Pty) Ltd* (A200/2024) ZAFSHC 260 (24 April 2026)

Coram: LOUBSER J, MOLITSOANE J *et* OPPERMAN J

Heard: 10 October 2025

Delivered: 24 April 2026

Summary: Settlement agreement – Uniform Rule 41(4) – whether the settlement agreement tainted by fraud or misrepresentation.

ORDER

The appeal is dismissed with costs, which include the costs of counsel on scale C.

JUDGMENT

Molitsoane J (Loubser J et Opperman J concurring)

[1] This is an appeal against the judgment of a single judge of this Division in which he ordered the appellant (the municipality) to pay an amount of R4 million to the respondent (Lequbu), in terms of the settlement agreement entered into between the parties. The appeal is with leave of the Supreme Court of Appeal.

[2] On 14 October 2020, the municipality appointed Lequbu to investigate problematic sewer lines in its area; to report and supervise any necessary construction work in order to resolve any issues pertaining thereto. The municipality informed Lequbu that its appointment fell within the ambit of emergency procurement as contemplated by the Municipal Finance Management Act 56 of 2003 (the Act) and the applicable Regulations promulgated under the Act and the municipality's Supply Management Policy. Lequbu accepted the appointment.

[3] According to Lequbu, it performed the work for which it had been contracted. Pursuant to the alleged performance of the work, it submitted seven claims to the municipality for professional services rendered. The municipality paid two of the claims and failed to pay the remainder, amounting to R15 342 055.00. On 1 April 2021, the municipality terminated Lequbu's appointment without payment of the outstanding claims. The remaining unpaid claims form the basis for the subject of this dispute. The dispute about the non-payment of the claims caused Lequbu to launch an application to enforce the payment of monies allegedly due to it. The first application was withdrawn and a fresh one instituted.

[4] The municipality then acknowledged the appointment of Lequbu as the

providers of the services it contracted with as well as the services rendered. It appears that Lequbu and the municipality could not agree on the quantum to be paid to Lequbu. When the application came before Naidoo J on 25 September 2022, the parties agreed to refer their dispute for mediation. On that basis, Naidoo J made, *inter alia*, the following orders, of which reference will only be made to the relevant ones:

‘1. The dispute regarding the quantum claimed by applicant for work done in terms of appointment letter dated 14 October 2021 is referred to mediation in terms of clause 27 of the General Conditions of Contract issued by National Treasury, as well as Uniform Rule 41A . . .

6. The mediator shall (*sic*) certify the amount owing and the amount so certified shall be the amount owing by respondents to applicant in respect of the fee claims.

8. . . . In the event of any of the parties being dissatisfied with the outcome of the certification, either party may proceed with litigation limited to the issue of quantification only.’

[5] The parties thereafter agreed to the appointment of Thuso Development Consultants (Thuso) as a mediator in order to mediate the dispute of quantum. On 14 July 2022, Thuso made its final determination that the value of the services rendered by Lequbu was R413 176.00. Lequbu was dissatisfied with the determination and communicated its dissatisfaction to the municipality. Lequbu further specifically indicated that it intended to recover the full outstanding amount of R15 342 055.00 from the municipality.

[6] On 23 December 2022 the municipality represented by its acting municipal manager, Dr Adonis, and Lequbu, represented by Mr Castro Thahane, settled their dispute. In this regard the municipality and Lequbu entered into a written settlement agreement in terms of which the municipality agreed to pay Lequbu R4 million in full and final settlement of the quantum claim. The settlement agreement made provision for payment of the outstanding amount in five instalments, with the first instalment of R1 million being due and payable on or before 31 March 2023.

[7] The municipality failed to pay the first instalment as agreed and this prompted Lequbu to approach this Court by way of an application to make the settlement agreement an order of court and to obtain judgment against the municipality by way of the procedure laid down in Uniform Rule 41(4).¹ The municipality opposed the

¹ Rule 41(4) provides: ‘Unless... proceedings have been withdrawn, any party to a settlement which has been reduced to writing and signed by the parties or their legal representatives, but which has not been

application.

[8] The application opposed by the municipality came before Hefer AJ. The learned judge found in favour of Lequbu and ordered the municipality to pay Lequbu the amount of R4 million. The municipality is aggrieved by the judgment and order of Hefer AJ. His judgment is assailed on a number of grounds, namely:

- a) That the court a quo erred in not finding that there was a material bona fide dispute of fact that could not be resolved on the papers and thus ought to have referred the application to trial.
- b) That the annexures of Lequbu were not incorporated into the founding affidavit and the court a quo could not have had regard to them.
- c) That the court a quo misdirected itself in not finding that Lequbu ought to have identified the portions of the affidavits it sought to rely on and thus could not merely rely on annexed documentation to the affidavit.
- d) That the court a quo erred in not finding that the settlement agreement constituted fraud, alternatively misrepresentation on the part of Lequbu.

[9] In opposing the application, the municipality in the proceedings before us and in the court a quo contends that there were substantial and reasonable dispute of facts which militated against the validity of the settlement agreement. It appears that the municipality contends that Dr Adonis was deceived into entering into this agreement and the conclusion of this agreement in these circumstances raised a dispute as to its validity. The essence of the complaint of the municipality was that Lequbu was obliged in terms of the court mediation order to provide information about its itemized fee claims. It is further contended that Lequbu failed to supply proof of such information.

[10] For this reason, so it is contended, Lequbu could not prove the amount of the claims against the municipality. It is such failure, so it is submitted, that Thuso came to the lower amount of the quantum amounting to R413 176.60. The municipality therefore contends that, having regard to the original amount of the claim and the amount Thuso arrived at, it should be clear that Lequbu attempted to overcharge, alternatively attempted to defraud the municipality with the amount of at least R14 292 055.00. The settlement agreement is thus disputed as it is alleged that it is tainted by fraud or

misrepresentation.

[11] In its answering affidavit, the municipality says the following through its deponent: ‘. . . it is clear oral evidence will have to be presented to establish the true nature of the agreement. The witnesses (i.e. persons present at the signing of the Settlement Agreement) will have to be subjected to cross examination in order for the court to arrive at a just ruling.’

[7] In my view, the court a quo correctly rejected the contention by the municipality. The court a quo correctly indicated that the municipality lost sight of the fact that rule 41(1) made provision for an application for judgment in terms of the deed of settlement concluded by the parties. The court a quo also relied on the order of Naidoo J which provided for the circumstance where any of the parties was dissatisfied with the outcome of the certification by the mediator.

[12] It is in the interests of the litigants to engage in negotiations where possible in order to reach settlement of disputes by agreement. The results of such settlement are beneficial to litigating parties in that the settlement reduces legal expenses and a compromise acceptable to all and sundry is attained. I accept that settlement will not always attain everything the parties intended when they started litigation, but this procedure is a cost-effective measure which may be necessary in certain instances.

[13] In this case, a settlement was reached. The fact that Lequbu settled for a far lesser amount it originally sued for, cannot be indicative of fraud or misrepresentation. Such a settlement does not demonstrate a dispute of fact; there may be a myriad of reasons for settlement. Most of the time, settlement negotiations are conducted on a non-prejudice basis. On the other hand, the municipality’s case is based on conjecture. It has not laid down any facts to substantiate fraud or any attempt to defraud. Mere speculations and inferences which are not based on facts will not suffice to refuse to endorse the settlement.

[14] On its version, the municipality confirms that the settlement agreement was signed by its acting municipal manager, an educated person who has a doctoral degree in some academic discipline, pursuant to legal advice from its legal team. What is curious is that the municipality has not filed any affidavit by Dr Adonis, who played a

pivotal role in concluding the agreement to substantiate its claim of deception, fraud or misrepresentation. There was no evidence before the court a quo supporting any fraud or deception of Dr Adonis before the court a quo and the court quo correctly rejected the assertion.

[15] The same speculation was raised by the municipality about allegations of procurement irregularities. In this regard, the municipality stated as follows in its answering affidavit:

‘The procurement processes of municipalities have until recently been characterized by substantial irregularities which require that a proper application be brought to seek the validation of various awards and contracts agreements such as these concluded which formed the basis of the orders obtained by contractors against municipalities.’

[16] Later in the affidavit, the deponent on behalf of the municipality stated:

‘I have further requested the relevant officials of the municipality to furnish me with the details of variations to existing contracts with service providers, records of deviation from procurement processes, memoranda and submissions approving the different stages of the procurement processes which were undertaken by the municipality in relation to the procurement decisions affecting(sic) the judgment creditors.

I also requested copies of the bid proposals received by the Municipality in relation to the procurement decisions impacting on the judgment creditors including quotations submitted, where applicable, purchase orders and details of payments tied to each award.

In light of the aforesaid and once I have received the relevant documents pertaining to this specific application of the applicant, an application for leave to file a further affidavit cannot be ruled out.’

[17] As can be seen above, the municipality brings no evidence to the table linking Lequbu to any procurement irregularities. It would seem to me that the municipality has engaged in auditing its procurement contracts. However commendable that action might be, it cannot be allowed to strangle the parties who entered into contracts with the municipality in the absence of any credible evidence of corruption or fraud. Contracts freely entered into must be enforced.

[18] In *Mafisa v Road accident Fund*² the court said the following with regard to contracts and settlement agreements in particular:

‘Contractual agreements concluded freely and voluntarily by the parties ought to be respected and enforced. This is in accordance with the established principle *pacta sunt servanda* (agreements must be honored). In *Barkhuizen* this court considered the constitutionality of a time-limitation clause in a short-term insurance policy which prevented an insured claimant from instituting legal action if summons was not served on the insurance company within the time-limit set out in the clause. In approaching this question, Ngcobo J, writing for the majority, recognized the importance of giving effect to parties’ freedom to contract in a manner that does not override the right of access to courts. In this regard, he stated:

“Self-autonomy, or the ability to regulate one’s own affairs, even to one’s own detriment, is the very essence of freedom and a vital part of dignity. The extent to which the contract was freely and voluntarily concluded is clearly a vital factor as it will determine the weight that should be afforded to the values of freedom and dignity.”³

[19] It is common cause that once the settlement agreement was signed, it became a legally enforceable contract. If the municipality had evidence that the agreement was tainted by fraud, one would have expected it to institute judicial review and seek to set aside the decision to enter into the agreement on that basis. No such application was launched and there is no counter application before us to that effect. The agreement remains extant. I agree with the court a quo in its judgment that ‘the settlement agreement relates directly to settled litigation, it is not at odds with public policy, and it holds a practical and legitimate advantage.’ I can find no reason why it should not be enforced.

[20] The other issue raised by the municipality is that there was no matter pending before court and there was also no matter to be removed from the roll which could have triggered rule 41(4). Consequently, so it is submitted, the court ought not to have granted the order based on rule 41(4). The court a quo dealt with this matter and indicated that the application before it was preceded by an application before Naidoo J concerning the recovery of the R15 million, which is the subject of this dispute. It is undisputed that the application before Naidoo J was not withdrawn but the learned judge gave certain directives as to further conduct of the application. The order of the

² *Mafisa v Road Accident Fund* [2024] ZACC 4; 2024 (4) SA 426 (CC).

³ *Ibid* para 36.

court specifically granted the parties the option to pursue its litigation in case of any dissatisfaction. The court a quo cannot be faulted for dismissing the application on the basis that the case before Naidoo J preceded the proceedings before it.

[21] The last issue to traverse relates to the contention that Lequbu failed to incorporate the annexures it relied upon, into its founding affidavit. This issue is a non-starter. The crisp issue for the court quo was whether Lequbu was entitled to a judgment based on the deed of settlement. The annexures complained about related to background evidence about how the settlement agreement came about. The uncontested evidence is that the municipality and Lequbu concluded a settlement agreement in terms of which the municipality agreed to pay Lequbu for professional services rendered. That agreement was referred to in the founding affidavit and annexed to it.

[22] The settlement agreement formed the basis for the new cause of action which culminated in the order of the court a quo. Reference to annexures prior to the conclusion of the agreement did not affect the agreement itself. Maybe if this was an application to review the decision to enter into the settlement agreement, such would have been relevant in that context. In any case, the municipality admitted most of the averments contained in the paragraphs complained of relating to the annexures. In view of the stance I take about the crisp issue before the court a quo, it is unnecessary to traverse the pleadings and the evidence to indicate the admissions by the municipality. I am of the view that the municipality has not made out a case on appeal, and the appeal must accordingly fail.

[23] There is no reason why the successful party cannot be entitled to its costs. I propose the following order:

‘The appeal is dismissed with costs which include the costs of counsel on scale C.’

P E MOLITSOANE
JUDGE OF THE HIGH COURT

I agree.

M OPPERMAN
JUDGE OF THE HIGH COURT

I agree and it is so ordered.

P LOUBSER
JUDGE OF THE HIGH COURT

Appearances

For the appellant:

CLH Harms

Instructed by:

Pieter Skein Attorneys
Bloemfontein

For the respondent:

N Snellenburg
Bloemfontein