IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: A81/2025

In the matter between:

JERSEY ADVERTISING CC	**FIRST APPELLANT**
HELEN TERRY REES	**SECOND APPELLANT**
and	
NEDBANK LIMITED	**RESPONDENT**

Neutral citation: *Jersey Advertising CC and Another v Nedbank Limited* (A81/2025) [2026] ZAFSHC 330 (9 June 2026)

Coram: MBHELE DJP, DANISO J et CRONJÉ AJ

Heard: 17 APRIL 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h00 on 9 June 2026.

Summary: Appeal against an order of the high court – settlement agreement encapsulates interim provisions and provides that the parties will eventually conduct a reconciliation of accounts – respondent dissatisfied with appellants' performance and sought relief not in all respects aligned with the provisions of the agreement – court granted well-intended relief but going beyond the terms of the agreement and the relief in the notice of motion – appeal succeeds.

ORDER

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1 The appellants' application for condonation for the late filing of the heads of argument is granted.

2 The appeal succeeds, and the order granted on 18 November 2022 is set aside.

3 Each party pays its own costs.

JUDGMENT

Cronjé AJ

[1] The appellants appeal against an order by a single judge of this Division (the court a quo), delivered on 18 November 2022, with the reasons provided on 4 August 2023. The essence of the application in the court a quo was the correct interpretation of a settlement agreement (the agreement) concluded between the parties and was made an order of court. The appellants' heads of argument were filed late, and the reasons were addressed. The respondent did not oppose the application, and condonation should be granted.

The settlement agreement

[2] The parties concluded the agreement on 4 June 2018. The essential terms of the agreement, for purposes of the appeal, are as follows:

'8. The parties agree that they will deal with the immovable properties situated at the below as follows.

8.1. 1[...] A[...] V[...] Street, Deneysville - property bonded under loan number 848[…] will, as soon as reasonably possible, be placed in the open market with a view to selling the property as expeditiously as possible. The Defendants will also after the property has been on the market for two months, and has not been sold yet, immediately be in contact with the Plaintiff's assisted sale division and sign all mandates needed to enable the Plaintiff's assisted sale division to assist with the sale of this property;

. . .

8.3. 2[…] and 2[…] A[...] V[...] Street, Deneysvllle – property bonded under account number

800[…] – it is recorded that as a result of the recent tornado that hit the Deneysville area, some remedial work is to be performed to this property. In the event that the remedial work is not commenced with within two months from date hereof, the Defendants will service the bond from the 1st day of the next month.

9. The parties agree that this settlement agreement may be made an order of Court by any of the parties.

. . .

11. The parties agree that the above matters will be pended until all the properties have been sold as listed above, whereafter a reconcilement will be done of all bond and loan accounts of the Defendants, to calculate what amount remains outstanding by the Defendant or Defendants towards the Plaintiff. This paragraph does not detract from or amend in any way the contents of paragraph 8.3.'

The notice of motion

[3] Not being satisfied with the appellants' alleged failure to perform in terms of the agreement, the respondent brought an application wherein the following relief was sought:

'2. Directing the Respondents to comply fully with their obligations in terms of the settlement order, and in particular to do the following:

2.1. The Second Respondent:

2.1.1. in respect of account number 848[…] (1[...] A[...] V[...]), to sign all mandates needed . . .

2.2. The First Respondent:

2.2.1. In respect of account number 800[…] (2[…] and 2[…] A[...] V[...]) to pay to the Applicant the amount of R675,973.17, being the amount of the accumulated arrears up to and including 1 August 2020, together with interest thereon at the rate applicable in terms of relevant agreement, by no later than 30 days after the granting of this order; and

2.2.2. Thereafter, and on a monthly basis, continuing to service the bond in respect of the property situated in 2[…] and 2[…] A[...] V[...] Street, Deneysville, mortgaged to the Applicant under mortgage account number 800[…].

. . .

4. Directing the Respondents to take all such steps, including the timeous passing of resolutions and timeous submission of applications for approvals and/or registrations, as shall be necessary and/or reasonably required to conclude, execute and/or implement the agreements as well as the transactions contemplated in the settlement order.'

The order of the court a quo

[4] After hearing the application, the following relief was granted:

'1. The Respondents shall take all necessary steps to fully comply with their full obligations in terms of the settlement order handed down by the Honourable Acting Judge Snellenburg on 20 September 2018 in particular do the following:

1.1 In respect of account number 848[…] (1[...] A[...] V[...]), the Second Respondent shall sign all mandates needed to enable the Applicant's Sales Division to market and sell the property;[1]

1.2 In respect of 11 [sic] above, the Second Respondent[2] shall update[3] the mandate should it expire before the said property is sold and to keep updating the mandate until the property is successfully sold;

1.3 The Applicant shall ensure that its sales division is always in contact with the 2nd Respondent in order to enable the successful sale of property 1[...] A[...] V[...].[4]

2. In respect of account 800[…] (2[…]/2[…] A[...] V[...]), the Respondents[5] shall bring the account up to date by paying the Applicant the arrears owed on this account.'[6] (My emphasis.)

The attack on the order

[5] It is stated that, considering the discrepancies between the terms of the agreement, the relief sought in the notice of motion, and the order, the court a quo erred in adding the words: 'Second Respondent shall sign all mandates needed to enable the Applicant's Sales Division to market and sell the property.'(Own emphasis.) The settlement agreement referred to the 'respondents', not the second appellant. Furthermore, the court erred in ordering the *appellants* to bring the account in respect of 2[…]/2[…] A[...] V[...] up to date by paying the respondent the arrears owed on this account. The court made the order against the *second* appellant, without considering that the respondent had sought relief against the *first* appellant.

[6] The respondent made no case for payment of the pleaded amounts and admitted in its replying affidavit that some payments were in fact made. The settlement agreement provides that arrears must be paid after tornado damage is repaired. I pause

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[1] This does not accord with the exact provisions in the agreement but the last portion of the clause in the agreement is the same. However, there is an incorrect referral to the second appellant in the notice of motion.

[2] This is captured in the notice of motion but not provided for in the settlement agreement.

[3] The notice of motion stated that she should 'sign'.

[4] This does not find expression in the notice of motion or the settlement agreement.

[5] The notice of motion limited it to the first appellant only.

[6] This is not provided for in the notice of motion or the settlement agreement.

to state that this is not correct. Clause 8.3 of the agreement provides that if the remedial work is not commenced within two months, the appellants will service the bond from the first day of the next month. No payments are thus due, and paragraph 11 of the agreement provides that the matters will be held in abeyance until all the properties are sold, after which a reconciliation of all outstanding bond and loan accounts will be performed.

The appellants' submissions

[7] Mr Roux referred to *Fischer and Another v Ramahlele and Others*[7] where the court held that:

'It is not for the court to raise new issues not traversed in the pleadings or affidavits, however interesting or important they may seem to it, and to insist that the parties deal with them. . . . If they wish to stand by the issues they have formulated, the court may not raise new ones or compel them to deal with matters other than those they have formulated in the pleadings or affidavits.'[8] (Footnotes omitted.)

[8] The orders in paragraphs 1.1 and 1.2 of the order fell outside the ambit of what the court had to determine. Similarly, the court made orders in respect of 2[…]/2[…] A[...] V[...], but did not specify the amount or the period in which it had to be done. This makes the order vague. In *Eke v Parsons*[9] (*Eke*), the court held:

'[74] If an order is ambiguous, unenforceable, ineffective, inappropriate, or lacks the element of bringing finality to a matter or at least part of the case, it cannot be said that the court that granted it exercised its discretion properly. It is a fundamental principle of our law that a court order must be effective and enforceable, and it must be formulated in language that leaves no doubt as to what the order requires to be done. The order may not be framed in a manner that affords the person on whom it applies, the discretion to comply or disregard it. In *Lujabe* Molahlehi AJ said:

"The issue that arises in a case where the settlement agreement has been made an order of [c]ourt and in the context of contempt proceedings is whether such an order is executable or

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[7] *Fischer and Another v Ramahlele and Others* [2014] ZASCA 88; 2014 (4) SA 614 (SCA); [2014] 3 All SA 395 (SCA).
[8] Ibid para 14.
[9] *Eke v Parsons* [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC).

enforceable. The basic principle is that for an order to be executable or enforceable its wording must be clear and unambiguous. An order that lacks clarity in its wording or is vague is incapable of enforcement. The other basic principle is that the order should as soon as it is made, be readily enforceable. In other words, the order must give finality to the dispute between the parties and not leave compliance therewith to the discretion of the party who is expected to comply with such an order."' (Own emphasis and footnotes omitted.)

[9] In *Public Protector v South African Reserve Bank*[10] (*Public Protector*), it was held that the purpose of pleadings is to define the issues for the other party and the court, and for the court to adjudicate those issues in dispute.[11] The order is at variance with the court a quo's own view that it is well established that clauses in a contract must be interpreted having regard to the language used in the light of the ordinary rules of grammar and syntax, the context and purpose of the clauses in order to give the agreement a commercially sensible meaning. The court reasoned that, to break the stalemate, a decision had to be made to preserve the spirit of the settlement agreement. Had the respondent believed that the appellants were delaying the matter, it would have launched its application or any other action sooner than it had.

[10] In respect of 1[...] A[...] V[...], the court incorrectly reasoned that the frustration of the agreement arises from the appellants. The only obligations imposed on the appellants were to place the property on the market as soon as possible and, if it was not sold after two months, to contact the respondent's assisted sales division to sign mandates. This was done. The mandate does not stipulate who is responsible for renewing it. There are contradictions in the mandate. On the one hand, it states that it remains in effect until the respondent provides written confirmation of cancellation and otherwise terminates 100 days after the date of signing. The two scenarios are contradictory. The respondent elected the 100-day provision, which failed to consider the other provision.

[11] The court correctly reasoned that the respondent did not address whether the bond for 2[…]/2[…] A[...] V[...] is serviced, and that the issue was not before her. Yet, she reasoned that, to break the stalemate, a decision had to be made to ensure the spirit of

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[10] *Public Protector v South African Reserve Bank* [2019] ZACC 29; 2019 (9) BCLR 1113 (CC); 2019 (6) SA 253 (CC).
[11] Ibid para 234.

the settlement agreement was preserved. This was inadmissible with reference to in *Public Protector*.

The respondent's arguments

[12] Mr Reinders submits that on a proper reading of the order of the court a quo, the appellants had to comply with their obligations in the agreement. The order remains an interim order and is therefore not appealable. Reference is made to *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*[12] (*Lebashe*) where the Constitutional Court held:

'[45] What is to be considered and is decisive in deciding whether a judgment is appealable, even if the *Zweni* requirements are not fully met, is the interests of justice of a particular case and whether or not an order lacking one or more of the factors set out in *Zweni* constitutes a "decision" for the purposes of section 16(1)(a) of the Superior Courts Act. Over and above the common law test, it is well established that an interim order may be appealed against if the interests of justice so dictate. It is thus in the interests of justice that the impugned interim interdict is appealable on the allegation that the interdictory relief in question resulted in the infringement of the right to freedom of expression.

[46] . . . The Supreme Court of Appeal in *Health Professions Council of South Africa* held that, where a litigant may suffer prejudice or even injustice if an order or judgment is left to stand, leave to appeal against orders or judgments made during the course of the proceedings should be granted. In determining whether the impugned interim interdict was appealable, the Supreme Court of Appeal was not exercising a discretionary power; it was making a value judgment. Accordingly, this Court is entitled to make its own assessment and conclude that the impugned interim interdict was a "decision" and thus within the Supreme Court of Appeal's jurisdiction.' (Footnotes omitted.)

[13] The parties committed in the agreement to place the properties at 2[…]/2[…] A[...] V[...] on the market as soon as possible, and it was recorded that some remedial work was required; therefore, the bond had to be serviced. The court a quo was correct to consider the period of stalemate (four years) and that something had to be done to keep the spirit of the agreement intact. Reference is made to *Roazar CC v Falls*

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[12] *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* [2022] ZACC 34; 2022 (12) BCLR 1521 (CC); 2023 (1) SA 353 (CC).

Supermarket CC[13] (*Roazar)*. The principles stated therein align with what was stated in *Public Protector.*[14]

[14] In *The City of Tshwane Metropolitan Municipality v Blair Atholl Homeowners Association*[15] (*City of Tshwane*) the Court held:

'[61] It is fair to say that this court has navigated away from a narrow peering at words in an agreement and has repeatedly stated that words in a document must not be considered in isolation. It has repeatedly been emphatic that a restrictive consideration of words without regard to context has to be avoided. It is also correct that the distinction between context and background circumstances has been jettisoned. This court, in Natal Joint Municipal Pension Fund v Endumeni Municipality [2012] ZASCA 13; 2012 (4) SA 593 (SCA), stated that the purpose of the provision being interpreted is also encompassed in the enquiry. The words have to be interpreted sensibly and not have an un-business-like result. These factors have to be considered holistically, akin to the unitary approach.' (Footnotes omitted.)

[15] It is submitted that no proof was placed before the court that the appellants provided the respondent with a mandate in respect of 1[...] A[...] V[...]. The court did not amend the agreement without hearing the parties. It attempted to break the stalemate, granted orders that had a good and practical effect, and the appellants are not prejudiced in complying with the orders.

Discussion

[16] In *Lebashe* it was held that an interim order may be appealed against if the interests of justice so dictate. Although the order of Snellenburg AJ was interim, the order of the court a quo was not. The court granted final relief. The appellants may suffer prejudice or even injustice if an order or judgment is left to stand.

[17] In *Roazar,* the court held that the court in *Southernport Developments (Pty) Ltd v Transnet Ltd*[16] approved the principle that a promise to negotiate in good faith occurring

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[13] *Roazar CC v Falls Supermarket CC* [2017] ZASCA 166; [2018] 1 All SA 438 (SCA); 2018 (3) SA 76 (SCA).
[14] Op cit fn 10.
[15] *The City of Tshwane Metropolitan Municipality v Blair Atholl Homeowners Association* [2018] ZASCA 176; [2019] 1 All SA 291 (SCA); 2019 (3) SA 398 (SCA).
[16] *Southernport Developments (Pty) Ltd v Transnet Ltd* 2005 (2) SA 202 (SCA).

in a context where the arrangement makes it clear that the promise is too illusory or too vague and uncertain to be enforceable is not enforceable. The determination of whether a promise is too illusory or too vague and uncertain must be made against the backdrop of an understanding that good faith should be encouraged in contracts and that a party should be held to its bargain. When two contracting parties conclude a bargain that a certain state of affairs will come into existence between them, provided only that the terms of a necessary condition shall be agreed, a court called upon to interpret that provision may find itself required to develop the common law.

[18] The court a quo found that the respondent did not address whether the bond for 2[…]/2[…] A[...] V[...] was serviced, because it was not before her. That should have been fatal to any relief in respect of those properties. When the court thereafter made the orders in respect of those properties, those orders cannot stand.

[19] With respect to the 1[...] A[...] V[...] property, the court also erred in expanding the relief. The record shows that the second appellant provided the respondent with a mandate on 8 January 2020. Yet, she reasoned that, to break the stalemate, a decision had to be made to preserve the spirit of the settlement agreement. This was, respectfully, impermissible.

[20] In *City of Tshwane*, the court held that in the interpretation exercise, the point of departure is the language of the document in question. Without the written text, there would be no interpretive exercise. The written text is what is presented as the basis for a justiciable issue. No practical purpose is served by further debate about whether evidence by the parties about what they intended or understood the words to mean serves the purpose of properly arriving at a decision on what the parties intended as contended for by those who favour a subjective approach. Nor is it helpful to continue debating the correctness of the assertion that it will only lead to self-serving statements by the contesting parties. Courts are called upon to adjudicate in cases where there is dissensus.

[21] Although one can appreciate that a party to an agreement may be dissatisfied with the other party's compliance, a court should be cautious not to attribute fault or to venture in devising mechanisms to break deadlocks outside the agreement’s wording

and the relief sought. The caution in *City of Tswane* regarding the interpretation of agreements must be heeded.

[22] Similarly, *Eke* warned that if an order (also read 'agreement'), is ambiguous, ineffective, inappropriate, or lacks the element of bringing finality to a matter or at least part of the case, a court cannot exercise discretion to give effect to it where the parties realise *ex post facto* that there may be deficiencies. It is for the parties to conclude agreements that are effective and enforceable. They should formulate the agreement in language that leaves no doubt as to what needs to be done.

Conclusion

[23] On the basis of the above, the order of the court a quo cannot stand and must be set aside. Where a party is not satisfied with the bona fides of the other contractual party or wishes to hold a party to specific terms, other avenues may be available. The court a quo granted final orders that were not competent.

[24] The court a quo ordered each party to pay its own costs. Molitsoane J granted leave to appeal against the order and ordered that the costs will be costs in the appeal. There can be no doubt that the court a quo went beyond what the respondent sought and devised mechanisms that were, on their face, well-intentioned but unsustainable. In my view, an order that each party shall pay its own costs would accord with fairness and would place the parties in the position they were in before the order was granted.

Order

[25] In line with existing practice, the following order is made:

1 The appellants' application for condonation for the late filing of their heads of argument is granted.
2 The appeal succeeds, and the order granted on 18 November 2022 is set aside.
3 Each party pays its own costs.

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P R CRONJÉ

ACTING JUDGE

I concur:

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N M MBHELE

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

I concur:

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N S DANISO

JUDGE OF THE HIGH COURT

Appearances

On behalf of Appellants:	A Roux
	JNS Attorneys, Randburg
	Spangenberg, Zietsman & Bloem, Bloemfontein
On behalf of Respondent:	S J Reinders
	Cliffe Dekker Hofmeyer, Sandton
	McIntyre Van Der Post, Bloemfontein