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

Case Number: 2026/006146
2025/227267
2025/248055
2026/006128

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

19/6/26

DATE

SIGNATURE

In the matter between:

**Q[...] N[...] M[...] obo
N[...] G[...] M[...]**

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

In the matter between:

MASINA MOSES SOLOMON

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

In the matter between:

MABUSELA SHILA SHARON

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

In the matter between:

SELLWANE LYDIA MALAKOANE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

Flynote

Road Accident Fund — Settlement — Validity — “Without prejudice” offer — Acceptance inconsistent with terms of offer — Whether valid agreement concluded — No consensus where acceptance seeks to limit full and final offer to partial settlement — No valid compromise — Settlement not made order of court.

Civil procedure — Separation of issues — Uniform Rule 33(4) — Whether parties may informally agree to separation of heads of damages — Judicial control required — Separation without court order ineffective — Settlement purporting to achieve piecemeal determination not competent.

Practice — Road Accident Fund matters — Piecemeal settlements confined to general damages — Attempt to defer determination of other heads (including loss of earnings) — Procedurally impermissible in absence of Rule 33(4) order — Risk of fragmentation, duplication and prejudice — Such agreements not competent for enforcement.

Contract — Compromise (transactio) — Requirements — Must finally dispose of dispute — Must be lawful and consistent with public policy — Application of *Eke v Parsons* — Agreement failing to dispose of lis and circumventing procedural rules should not be made order of court.

Headnote

Four cases involving claims against the Road Accident Fund were placed before the High Court on the basis of purported settlements arising from “without prejudice”

offers made by the RAF and signed by the plaintiffs' attorney. The settlements, identical in form, were presented to be made orders of court.

The court raised concerns that, properly construed, the settlements related only to general damages, notwithstanding that the offer documents recorded a full and final settlement of the plaintiffs' claims. After signature of the offers, the plaintiffs' attorney sought, in subsequent correspondence, to characterise the agreements as partial settlements confined to general damages, with the remaining heads of damages, including loss of earnings, to be determined at a later stage.

Held, that no valid settlement agreement had been concluded. The offers were unequivocally framed as full and final settlements and the purported acceptance, insofar as it sought to limit the agreement to a discrete head of damages, constituted a counter-offer rather than an acceptance. In the absence of consensus, no compromise came into existence.

Held, further, that even if an agreement could be construed, it was not competent to be made an order of court. The arrangement contemplated a piecemeal determination of damages which, in effect, amounted to a separation of issues. Such separation may only be effected by way of a court order in terms of Uniform Rule 33(4), granted upon consideration of convenience and fairness. Parties cannot, by agreement, achieve a procedurally binding separation with consequences equivalent to those arising under Rule 33(4).

Held, further, that informal or contractual separation of issues undermines procedural certainty, risks duplication of evidence, inflates costs, and may result in prejudice to litigants. Courts retain a supervisory discretion and are not bound to give effect to such arrangements.

Held -applying *Eke v Parsons*, that a settlement agreement must (a) relate to the dispute between the parties, (b) accord with the law and public policy, and (c) yield a practical and legitimate advantage. The purported agreements failed to meet these requirements in that they did not finally dispose of the lis, sought to circumvent Rule 33(4), and afforded no legitimate procedural advantage. There was furthermore no objective evidence on record of compliance with conditions relating to contingency fee agreements

The court, accordingly, refused to make the purported settlements orders of court and directed that the judgment be furnished to the Chief Executive Officer of the RAF and the Minister of Transport.

FISHER J

Introduction

- [1] Four matters came before me in settlement court. The plaintiff in each of them is represented by the same attorney and counsel. The settlements in each instance are founded on “without prejudice” offers made in a standard form and purported acceptance of the offers by the attorney in each matter.
- [2] At the hearing in respect of all four matters, I expressed concerns that the settlement appeared only to be in respect of general damages although this was somewhat obscure from the manner of the framing of the settlement terms and in the offer and acceptance correspondence put forward as founding the order sought.
- [3] Counsel for the plaintiff clarified from the Bar that the settlement was indeed in respect of general damages only. He explained that the Road Accident Fund (RAF) had indicated that it “had no appetite at present” for a holistic settlement.
- [4] Counsel confirmed that what was intended by the settlement was that there be a piecemeal determination of the damages, that an order be taken on this separate head, that payment follow in respect of the general damages first and that the matter would be set down later, presumably at the discretion of the plaintiff, for the determination of the further heads of damages.
- [5] This approach raises questions firstly, from the perspective of what the terms of the settlement actually are and secondly, as to whether an application in terms of rule 33(4) would be necessary before a court could give such a piecemeal order in RAF cases.
- [6] Counsel argued on both questions that the settlement sought in draft orders prepared by him and which were each identical in their terms were competent.
- [7] On a consideration of both questions, I refused to make them orders of court. I stated that reasons for these refusals would follow. These are those reasons.

- [8] In respect of each of the cases, the documents, in each instance, are identical but for the amounts in respect of which the draft order for settlement is framed. This formulaic approach extends to the pleaded cases.
- [9] Each of the actions relate to motor vehicle accidents which are alleged to have occurred some years ago and in respect of which action was only instituted some years after the accident.
- [10] In each instance, the Accident Report which has apparently been relied on in the pleaded case is illegible in material parts.
- [11] There is, furthermore, no indication of any court order in terms of which there has been a separation of liability from quantum in all the cases.
- [12] This raises concerns in that there has been no court oversight in relation to the settlement of the liability in each instance. But I am not asked to make an order in relation to the separation of the liability from quantum in any of the matters.
- [13] This judgment is thus confined to the settlement before me which relates to the piecemeal separation of the heads of damages and specifically general damages from the loss of earnings.
- [14] I will deal first with the pleadings in each of the four cases.

The four cases as pleaded

2026/006146 – Q[...] N[...] M[...] obo N[...] G[...] M[...] vs Road Accident Fund

- [15] It is pleaded that on 10 August 2010 the injured person was a pedestrian walking on the pavement in Etwatwa Benoni when he was hit by a vehicle being driven by the insured driver.
- [16] The injuries allegedly sustained are vaguely pleaded as a right foot injury; a right leg injury; and a neck and upper back injury.
- [17] The total quantum claimed is R2,500.000.00 made up of general damages at R 1,000, 000.00 and future and past loss of Income R 1,500, 000.00
- [18] Although there is no court order in respect of the merits having been settled there is a letter on the RAF's letterhead which, on the face of it, confirms that the merits have been settled. As I have said there is no indication of any court oversight as to the settlement of the merits.
- [19] The motor vehicle accident is alleged to have occurred at a time when the injured minor was approximately two years old. However, no contemporaneous accident report exists; instead, the report was only compiled on 30 January 2018 and subsequently date-stamped in April 2019, some eight to nine years after the alleged incident, without any explanation for this extraordinary delay.
- [20] Equally concerning is the medical chronology: the hospital records reflect an admission on 16 July 2019, nearly nine years post-accident, and inexplicably refer to a 29-year-old patient, which is irreconcilable with the minor claimant.
- [21] Thereafter, there is a further lacuna in the records until August 2025, when the sole medico-legal report was prepared, followed by the alleged conclusion of a contingency fee agreement in September 2025 and the institution of action in January 2026. The claim itself was only submitted to the RAF on 26 February 2026 – i.e. approximately sixteen years after the alleged accident.

[22] From the documents founding settlement in this and the other three cases there is lack of clarity as to whether this is meant to be an interim settlement of a separated claim for general damages or a full and final settlement. The documents which purportedly underlie this piecemeal approach are discussed in more detail later.

2025/227267 - Masina Moses Solomon vs Road Accident Fund

[23] This case presents with the same hallmarks as those found in the others in relation to the pleadings and the settlement. Again, there is a long lapse of time between the accident and the making of the claim, and the injuries are vaguely described.

[24] The accident is pleaded to have occurred on 08 September 2015 whilst the summons is dated 09 November 2025. The make-up of the claim is the same as the other case being, R1 million for general damages and R1.5 million for past and future loss of earnings

[25] The Accident Report is, again, illegible in salient parts and there is no indication of court oversight as to the alleged settlement of liability.

2025/248055 - Mabusela Shila Sharon vs Road Accident Fund

[26] In this case also the Accident Report is unclear as to salient details.

[27] The claim is, on the face of it, in respect of an accident that took place approximately nine years ago. The pleaded accident took place on 02 September 2017 when the plaintiff was a driver of one of the vehicles and allegedly swerved to avoid colliding with a stationary taxi.

[28] As in the other cases, the claim is for general damages of R 1 million and loss of earnings of R 1.5 million.

[29] In this matter a letter from the RAF reflects an agreement that liability has been settled on a 50/50 basis. Again, no court oversight is disclosed in relation to the separation and settlement of liability.

2026/006128- Sellwane Lydia Malakoane vs Road Accident Fund

[30] It is pleaded that the accident took place on the 20 June 2019, the plaintiff being a passenger in a motor vehicle which collided with another motor vehicle.

[31] The Accident Report, however, is anomalous in that it refers to an accident which occurred on 27 April 2019, and it is indicated thereon that the report was compiled on that date. It is also incomplete in material part.

[32] The damages claimed are, in their make-up, the same as in the other three cases. The injuries are, again, vaguely pleaded.

The settlement terms

[33] The central document put forward in each matter in relation to the alleged offer and acceptance of the settlement is on the RAF's standard in form and identical but for the amounts offered in each instance. This standard document is produced on an official RAF letterhead, and each has the following features:

- a. It is headed "OFFER & ACCEPTANCE OF SETTLEMENT - Without Prejudice " and addressed to Mr Ezenwa the attorney in each case.
- b. It provides that the offer is made without prejudice or admission of liability and in full and final settlement of its subject claim.
- c. SECTION A of the document is in respect of "CAPITAL PAYMENT DETAILS AND BREAKDOWN." and comprises a table which sets out the amount of the offer and its detailed breakdown with reference to the

various heads of damages on which the offer is made and the deductions which are taken into account in the calculation of the offer.

- d. The amounts of the offers in each case total R 550 000 for *M[...]*, R800 000 for *Masina*, R425 000 for *Mabusela* (on the basis of a 50% apportionment), and R750 000 for *Malakoane*.
- e. It is made clear from the breakdown that these amounts comprise general damages and that nil is offered in respect of the other heads.
- f. The offer is made conditional on receipt by the RAF of confirmation of the existence of a contingency agreement concluded with the claimant and proof of compliance with section 4 of the Contingency Fee Act¹. It is specifically directed that proof of the contingency agreement should be by way of an affidavit by the attorney and the affidavit by the claimant (not one affidavit but both affidavits); alternatively proof of submission of the two affidavits to the Legal Practice Council or proof that both affidavits were filed with the court. It is provided that where there is no contingency fee agreement in place, it must be recorded as such in the court order. Alternatively, the attorney must submit an affidavit to confirm that there is no contingency fee agreement.
- g. In each instance Mr Ezenwa nominated his firm's cheque account for payment.
- h. The document contains a warranty by Mr Ezenwa on behalf of the claimant in the following relevant terms:

¹ Contingency Fees Act 66 of 1997.

“ I warrant that the nominated account details are true and correct. I further agree to indemnify the RAF against any demands, claims or actions that may arise due to the RAF making payment into the nominated account.

I warrant that I have fully disclosed to the RAF all costs due to any supplier.

.....

I understand the meaning and extent of this Offer and Acceptance Notice and confirm that it records the full and final agreement between the RAF and me. The RAF is discharged from all liability pertaining to the loss suffered in the above mentioned accident.”

- i. It provides that the offer can only be accepted by full completion and on receipt of the signed original document and that any amendment to the form will not constitute settlement of the claim unless such amendment is expressly agreed on by the Fund.
- j. The offer is made valid for 30 days from date of offer, or until the date preceding the date of prescription of the claim, whichever date occurs first and it is provided that if the offer was made after prescription of the claim, it will be deemed to be a bona fide error and acceptance thereof will not be enforceable.
- k. It is specified that acceptance will only be valid if it is accepted in its totality and the following is provided:

“ An acceptance on one or more aspects of the offer (such as merits or quantum only or only selected heads of quantum) will be regarded as a counter offer by the claimant, and will not be deemed to constitute a valid agreement, unless the Road Accident Fund expressly accepts the counter offer”.

- [34] Each of these offers is, on the face of it, signed by Mr Ezenwa on behalf of the claimant as acceptance of the terms in each instance.
- [35] In light of this clear acceptance of the settlement offers by Mr Ezenwa, his further conduct in the cases raises concerns. In each matter, after signature of the offer, Mr Ezenwa engaged in subsequent written correspondence with the RAF in which he now purported to accept the offer on the basis that it was an interim order in respect of general damages only and not one in full and final settlement of all the claims.
- [36] Thus, having signed the full and final settlements in the aforesaid amounts at the space provided on the forms, Mr Ezenwa sought, by subsequent correspondence, to characterise the settlements as partial.
- [37] The draft orders prepared in respect of the matters, which are also identical but for the amounts, are peculiarly framed: an order is sought “in full and final settlement of general damages”.
- [38] If a settlement is full and final it is not partial or interim, so the use of the phrase “in full and final” in this context serves to create confusion both for a court and perhaps for the RAF.
- [39] The fact that the subsequent acceptance of the offer by Mr Ezenwa seeks to limit the settlement to part of the claims suggests to me that there is, in reality, no settlement.
- [40] It stands to reason that it would be attractive to the RAF to settle the matters fully at this stage in order to avoid further layout in costs. In contrast it seems to me that it is clearly imprudent and non-viable from a commercial perspective to settle partially and pay part of the claim and Mr Ezenwa’s 25% interim contingency fees whilst postponing the loss of earnings for future adjudication and more costs.

[41] Despite the requirements relating to the proof of the existence of the contingency fee agreement being painstakingly set out, only one affidavit relating to the contingency fee agreement – that of Mr Ezenwa is filed. The express condition for validity is thus not met.

[42] I am, in the circumstances, not satisfied that there has been a proper settlement in any of the cases.

[43] As I have said, the delay in the bringing of the claims requires explanation. These are not cases where the claim has been instituted early and the litigation dragged out thus causing a delay in determination.

[44] The fact that the RAF claims handler, in each instance, agreed in writing to the draft orders being made orders of court when they are patently at odds with the settlement terms is of concern to this court.

[45] To my mind, it would be prudent for an investigation by the Board of the RAF to ensue in order to determine whether orders have been sought by Mr Ezenwa or others which suffer from similar deficiencies as these cases. This should be a simple inquiry.

[46] From a general perspective, the agreements fall foul of a failure to obtain an order for separation in terms of rule 33(4). I examine below the impact of such failure on the application to have the agreements made orders of court.

Separation of claims

[47] Claims under the RAF are *sui generis*; they do not conform to common law aquilian form and principle; they have their own special statutory causes of action.

[48] In terms of s 17(1)(b)² the RAF's liability to compensate a third party for non-pecuniary loss (general damages) is limited to compensation for a serious injury as contemplated in subsection (1A).

[49] A further statutory cause of action is a claim in terms of s 17(4)(a) for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her which entitles the claimant to an undertaking to that effect on proof of the costs having been incurred or the direct payment to the provider of such service or treatment and in accordance with statutory approved tariffs and caps for claims relating to loss of income.

[50] The causes of action are separate and distinct and yet they are all founded in the injuries sustained in the accident and their sequelae which are at the centre of the forensic and factual evidence required for all the claims.

[51] Rule 33(4) accords to the court the discretion to order the separate determination of issues. It reads:

“If, in any pending action, it appears to the court mero motu that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the questions cannot conveniently be decided separately.”

[52] Thus, the central requirement for separation of issues is convenience.

² Road Accident Fund Act 56 of 1996.

- [53] Each of the possible statutory claims available to a claimant under the RAF Act comprise separate questions of law and/or fact. If these questions are to be determined separately this must occur in terms of rule 33(4).
- [54] Separation has important consequences: it changes the structure of the trial; It can lead to separate judgments and possibly appealable decisions on separated issues; it affects onus, evidence, and procedural rights.
- [55] Without a Rule 33(4) order a court is not bound by the parties' agreement; there is no true procedural separation in law.
- [56] The court may require all issues to be addressed or decline to treat the issues as finally determined in isolation.
- [57] This is a basis for refusing to make the settlement an order of court.
- [58] The separation of issues is, ultimately, a case management and fairness question, and the court must be satisfied that it is convenient and appropriate, and will not cause prejudice or fragmentation of litigation.
- [59] A separation of issues is a matter for the court under Rule 33(4). The parties cannot, by agreement, achieve a procedural separation with legal consequences equivalent to a Rule 33(4) order; at most they may agree to limit the issues, but the court is not bound to determine them separately.³
- [60] Informal separation tends to produce exactly what *Tongaat*⁴ and *Denel*⁵ warn against: Litigation conducted in artificial stages without judicial control can lead to difficulty integrating findings into a coherent final judgment. This risks

³ *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA); *Minister of Agriculture v Tongaat Group Ltd* 1976 (2) SA 357 (D).

⁴ *Minister of Agriculture v Tongaat Group Ltd* 1976 (2) SA 357 (D).

⁵ *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA).

duplication of evidence for different issues at different hearings and witnesses having to be recalled which leads to increased costs and delay.

- [61] Because the court has not assessed “convenience” in the context of a hearing in settlement court the agreed separation may advantage one party prejudice the other in ways not immediately apparent.
- [62] A Rule 33(4) order typically defines the issues separated. Without it: the “separation” may be ambiguous and may result in a judgment that does not finally resolve all the issues.
- [63] Courts must be alert to attorneys attempting to get paid fees up front whilst full adjudication is delayed for years.
- [64] Informal arrangements that mimic separation of issues carry all the risks of separation without the safeguards of Rule 33(4), and have the potential to result in duplication, prejudice, and procedural uncertainty to the detriment of both parties and the court.
- [65] In *Eke*⁶ Madlanga J cautioned against the notion that anything agreed to by the parties should be accepted by a court when considering whether to make an agreement an order of court. He went on to say that, when parties approach a court to make a compromise an order of court, it must be competent and proper in that the agreement must: (a) relate directly or indirectly to the dispute between the parties; (b) not be objectionable in that it must accord with the Constitution and the law and not be offensive to public policy; and (c) hold some practical and legitimate advantage.⁷

⁶ *Eke v Parsons* [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC).

⁷ *Id* at paras 25-26.

[66] The procedural disadvantages in the approach sought to be taken in these matters are manifest. Furthermore, the agreements are not true compromises in that they do not bring an end to the *lis* between the parties.

[67] *Eke*⁹ demands of the courts that they ensure that the agreement is competent and proper before it can be given the seal of a court order⁹.

[68] A settlement agreement which seeks to separate issues informally should not be countenanced. To the extent that a settlement agreement results in a separation of issues this must be done in accordance with rule 33(4).

Conclusion

[69] In sum, the cases disclose non-compliance with contingency fee requirements, defective and delayed evidential records, unexplained inconsistencies in accident and medical documentation, and agreement by RAF officials to draft orders which are inconsistent with the underlying offers.

[70] These features raise systemic concerns warranting further investigation by the RAF.

[71] Even if the correspondence between the RAF and Mr Ezenwa could be construed in each instance as a settlement agreement, it falls woefully short of the threshold set in *Eke* in that it does not relate to the holistic settlement of the dispute; it does not accord with the law in that it results in the circumvention of rule 33(4) and it holds no practical and legitimate advantage.

Order

⁹ *Id.*

[72] Apart from the refusal to make the settlement agreements orders of court which I handed down at the hearing, I deem it appropriate that this judgement be disseminated to the RAF and the Minister of Transport. I thus direct as follows

The Registrar is directed, forthwith, to send a copy of this judgment to the Chief Executive Officer of the RAF and the Minister of Transport.

**FISHER J
JUDGE OF THE HIGH COURT
JOHANNESBURG**

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Caselines. The date for hand-down is deemed to be 19 June 2026.

Date of Hearing: 11 June 2026

Date of Judgment: 19 June 2026

Appearances:

Counsel for the Plaintiffs: Adv I Nwakodo

Instructed by: Ezenwa Attorneys

