



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO. 2022/2069

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

01/07/2026

In the matter between:

HLATSHWAYO GODFREY SIBUSISO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT: *POINT IN LIMINE*

BHOOLA AJ,

Introduction

[1] The plaintiff, who was a driver, sustained injuries as a result of a motor collision which occurred on 23 March 2015. This application was set down for the hearing of a default judgment on the default trial roll on the 21 October 2025, together with an application in terms of Rule 38(2) of the Uniform Rules.

[2] The defendant, the Road Accident Fund (“the RAF”), made an appearance at the hearing and raises a *point in limine* that the plaintiff’s claim was settled without legal representation as a direct claim, on the 14th March 2017.

[3] The plaintiff opposes the *point in limine* on two bases, firstly, the plaintiff contends that the defendant’s defence was struck out pursuant to a court order and the defendant is accordingly not entitled to rely on the defence of settlement and, secondly, no valid settlement was concluded between the parties.

[4] The issue presently before this Court is confined to the determination of the *point in limine*. The merits of the plaintiff’s claim in respect of the default judgment are not determined at this stage of the proceedings.

[5] The Court directed that both Counsel file heads of arguments arising from the *point in limine* raised namely, whether the defendant can lead evidence where the defence is struck out, and whether this claim was settled.

Background facts

[6] On the 29 June 2015, the plaintiff lodged a ‘direct claim’ with the RAF without the assistance of any legal representation. The claim related to general damages and future medical expenses. No claim for loss of earnings or earning capacity was instituted at that time.

[7] The defendant contends that the claim was settled in full and final settlement between the parties on or about 14 March 2017 by way of “merits 50% in favour of the plaintiff and an “undertaking for future medical expenses” in terms of section 17 of the Road Accident Fund Act¹, when the claim was still a ‘direct claim’ with the defendant.

[8] The defendant cannot locate the said settlement agreement between the parties, as almost 10 years has lapsed, since settlement.

[9] The defendant has subsequently, printed a new section 17(4(a) Undertaking for future Medical expenses, dated 23 November 2024, which reflects the terms of settlement between the parties. However, only the defendant’s signature appears on the settlement. The plaintiff has not signed this new document.

[10] The plaintiff instructed his current attorneys of record to investigate the collision which occurred on 23 March 2015 on 11 April 2021.

[11] The plaintiff’s attorneys issued summons against the defendant on the 20 January 2022, which was served on the defendant on 27 January 2022. The defendant filed his notice of intention to defend on 20 June 2022.

[12] On 22 July 2022 the plaintiff served and terminated his mandate with the defendant in accordance with a termination of mandate letter dated 18 July 2022.

[13] The defendant did not file its plea within the prescribed time period, and, a notice of bar was served on 10 March 2023.

¹ Act 56 of 1996

[14] The notice of bar dated 10 March 2023 was uplifted on 20 October 2023

[15] The defendant delivered a plea on the 31 October .2023. However, the defendant did not raise settlement as a defence in its plea.

[16] On 10 March 2025 the Court granted an order compelling the defendant to attend a second pre- trial conference in terms of Rule 39(2) of the Uniform Rules within five days of service of the order, failing which the defendants defence would be struck out on the sixth day after service of the order, and and the matter would automatically be heard on a default basis when set down for hearing.

[17] The said order was served on the defendant on the 13 March 2025.

[18] The defendant failed to comply with the compelling order and the defence was consequently struck out.

[19] No application was launched to reinstate the plea, to rescind the order, or to amend the pleadings subsequent to the defendant's plea being struck out on the 10 March 2025.

Issues

[20] The following issues for determination are:

- (i) Whether the defendant, whose plea had been struck out, is entitled to rely upon a defence of settlement.
- (ii) Whether a valid settlement agreement was concluded between the parties,

Legal Framework

Striking out of defence

[21] The striking out of pleadings is regulated by Rule 23 of the Uniform Rules of Court. Rule 23 (1) provides that the court may, at any stage of proceedings, order that any pleading or part thereof be struck out if it:

- (i) discloses no reasonable cause of action or defence;
- (ii) is vague or embarrassing, or
- (iii) is contrary to law, scandalous, vexatious, or irrelevant.

[22] Additionally, the Court retains inherent jurisdiction to regulate its own process and to enforce compliance with its orders. Where an order expressly provides that non-compliance will result in a defence being struck out, that consequence follows upon failure to comply.

[23] In *Stevens and Another v Road Accident Fund*², the Court held at paragraph 11:

“..... the striking out of the defence of the defendant does not in itself bar the defendant from participating in these proceedings. The defendant is entitled to participate in these proceedings, but his participation is restricted in the sense that it cannot raise the defence that had been struck out by an order of Court.”

[24] In *T.P.R obo P.M.M v Road Accident Fund*³

“[18] To clarify: I find that when a defendant’s defence has been struck out, a plaintiff still has to prove its entitlement to damages and the extent thereof and a defendant has the right to cross-examine the plaintiff’s witnesses or to interrogate their affidavits (and reports) if they have been allowed by a court in terms of Rule 38(2) on condition further that the defendant may not put a different factual version

² (226017/2016) [2022] ZAGPJHC 864

³ (9117/2019) [2024] ZAGPPHC 387 (18 April 2024)

to such witnesses, lead countervailing evidence or base any argument on facts not put in evidence by the plaintiff.

[25] The general principle is that once a plea has been struck out, that party concerned is procedurally barred from relying upon that defence unless an application is launched for reinstatement, rescission or amendment and it is granted.

[26] In this matter, the defendant did not seek such an application and merely addressed the court from the bar. There was no affidavit, nor any evidence placed before this court to justify the defence of settlement.

Settlement Agreement or Compromise

[27] It is well established that parties are bound by their pleadings. A defence not pleaded cannot ordinarily be relied upon.

[28] A settlement, or compromise (*transactio*), is a contract between parties to resolve a dispute or uncertainty.

[29] In *Gollacg & Gomperts (1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd*⁴, the Appellate Division held that a compromise:

- (i) is contractual in nature
- (ii) does not require pending litigation;
- (iii) extinguishes the original cause of action; and
- (iv) creates new rights derived from the agreement.

⁴ 1978 (1) SA 914 (A)

[30] In *Be Bop A Lula Manufacturing & Printing CC v Kingtex Marketing (Pty)*⁵, the Supreme Court of Appeal confirmed that a valid compromise replaces the underlying claim with the contractual rights arising from the settlement.

[31] The requirements for a valid compromise or settlement agreement are:

- (i) Consensus between the parties (offer and acceptance)
- (ii) Intention to settle the dispute
- (iii) Certainty in terms

[32] The party alleging the existence of a compromise or settlement bears the onus of proving and establishing its existence.

[33] A compromise or settlement must relate to a lis between the parties: a dispute or uncertainty, but pending litigation is not a requirement.

[34] A lis exists where there is a disagreement regarding rights, liabilities, or claims, even at the administrative or claim stage prior to summons.⁶

[35] In RAF matters, disputes regarding negligence, apportionment, or the extent of liability are sufficient to constitute a lis capable of being compromised.

Analysis

Procedural Background: Striking out of defence

⁵ Ltd 2008 (3) SA 327 (SCA)

⁶ Ex Parte Le Grange and Another In re: Le Grange v Le Grange [2013] ECGHC 75 (Le Grange) at para 22. In the South African Law Reports, this is reported as PL v YL 2013 (6) SA 28 (ECG) para 15

[36] The defendant's plea was struck out pursuant to a court order dated 10 March 2025 following non-compliance.

[37] No application was launched to reinstate or amend the plea.

[38] The defence of settlement was not pleaded and was raised for the first time from the bar.

[39] In these circumstances, and in the absence of appropriate procedural relief, the defendant is not entitled to rely upon a defence that was neither pleaded nor preserved.

[40] For these reasons alone the *point in limine* cannot be upheld and is dispositive of the matter.

Onus of proof of settlement or compromise

[41] It is common cause that there was no signed agreement produced for 2017 by the parties

[42] Before delving into the validity of the settlement agreement, this defence of settlement, raised from the bar was not pleaded. It is trite that parties are bound by its pleadings. In the absence of a plea that the matter has become settled this *pointe in limine* cannot be upheld.

[43] Even if the defence was properly before Court, the primary question is whether a valid settlement was concluded in 2017.

[44] The document dated 23 November 2024 is signed by the defendant only and does not demonstrate consensus between them parties. This document bears no relevance and is interpreted as an 'offer' from the defendant with no reciprocal acceptance from the plaintiff. There is no evidence before this Court of acceptance by the plaintiff, nor sufficient proof of certainty of terms.

[45] While the absence of pending litigation in 2017 does not, as a matter of law, preclude the existence of a settlement agreement or compromise, the defendant has not established that any settlement agreement or compromise complying with the legal requirements are concluded.

Conclusion

[46] In the light of the striking out of the defendant's plea, and in the absence of any order for reinstatement, rescission or amendment by the defendant, the defendant is not entitled to rely upon the defence of settlement.

[47] The defendant has also not established the existence of a valid settlement agreement or compromise between the parties.

[48] The *point in limine* raised from the bar that the matter has become settled in 2017, cannot be upheld as the defendant has not discharged the onus on a balance of probabilities.

Order

[49] The defendant's point in limine is dismissed.

[50] The matter shall proceed in accordance with the applicable procedural prescripts.

[51] The Defendant shall pay the costs in the *point in limine*.

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CB. BHOOLA

Acting Judge of the High Court

Gauteng Division of the High Court, Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 01 July 2026 and is handed down electronically by circulation to the parties/their legal representatives by e mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 01 July 2026.

APPEARANCES

Date of hearing: 21 October 2025

Date of judgment: 1 July 2026

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