IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case No: A5034/2021; 49337/2017

Reportable: No
Of interest to other Judges: No
Revised: No
Date: 4 August 2026 N Strathern AJ
Signature: ________________

In the matter between:

EAGLE TWO PROPERTY INVESTMENTS (PTY) LTD	First Applicant
EAGLE THREE PROPERTY INVESTMENTS (PTY) LTD	Second Applicant

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	Respondent

Heard on:	22 July 2026
Decided on:	4 August 2026
Coram:	N Strathern AJ

Summary: Compromise — settlement reached during court-directed negotiations — actual and apparent authority established — no evidence of lack of authority — late answering affidavit not condoned — settlement declared and made an order of court — attorney-and-client costs for the City's dilatory conduct.

JUDGMENT

N Strathern AJ

Introduction

[1] This is an application to enforce a compromise concluded in litigation. The Applicants seek a declarator that the dispute was finally settled on or about 11 October 2022 on the terms embodied in annexure NOM1, and an order making those terms an order of court. In the alternative, they seek a referral to oral evidence. The Municipality belatedly opposes the relief and seeks condonation for its answering affidavit.

[2] The dispute arises from the Applicants' claim for a refund of municipal charges they say they were wrongly billed. Default judgment was granted in their favour on 25 April 2019. The Municipality applied to have that judgment set aside and failed. It then obtained leave to appeal, but allowed the appeal to lapse, and the appeal has never been reinstated. When the Municipality's application to revive the appeal came before the Full Court on 11 April 2022, that Court postponed the application and directed the legal representatives of both sides to engage with one another so that settlement could be explored. The settlement now in issue is the product of that litigation and those court-directed negotiations.

[3] The narrow questions are whether the Municipality has made out a case for condonation, whether a settlement was concluded with authority, whether the proposed order meets the requirements for a compromise to be made an order of court, and what costs order justice requires. The facts show an extraordinary and continuing failure by the Municipality to

prosecute its litigation responsibly, comply with rules and court directions, or put up admissible evidence to support its repudiation of a settlement which its own legal representatives repeatedly confirmed.

The procedural history

[4] The action was instituted in December 2017. The Municipality delivered a notice of intention to defend but did not deliver a plea. A notice of bar was served in February 2018. The Applicants granted indulgences while the Municipality repeatedly said that the matter could be settled, but no plea or competent application to uplift the bar followed. Default judgment was granted on 25 April 2019.

[5] The rescission application was dismissed. The Full Court was thereafter faced with an application to reinstate a lapsed appeal. On 11 April 2022 it encouraged the parties to settle and removed the matter from the roll for that purpose.

[6] Four meetings followed, on 4 May, 20 May, 3 August and 11 October 2022. They were attended by the Applicants' attorney and counsel, the Municipality's attorney, Mr Mabaso, the Municipality's senior counsel, Adv Georgiades SC, and Municipality officials, including Mr Tuwani Ngwana, the senior legal adviser who had deposed to affidavits for the Municipality in related proceedings. The Municipality's representatives were given time to examine their records and calculations. The amount ultimately agreed was substantially lower than the default judgment, and did not carry interest. After no less than four separate meetings being held, where not only the respondent's legal representatives where present but also authorised employees of the respondent, the parties reached full and final settlement.

The agreement and its confirmation

[7] The Applicants' evidence is that, at the meeting of 11 October 2022, the Municipality's officials, Mr Mabaso and Adv Georgiades confirmed that they had authority to settle. The parties then agreed that the Municipality would:

a. credit R4 966 824.79 to the Applicants;

b. allocate that credit to the account identified in the draft order; and

c. pay the Applicants' party-and-party costs, taxed or agreed.

[8] The central terms were promptly recorded in a contemporaneous email to Mr Mabaso, copied to both counsel. Adv. Georgiades and Mr. Mabaso also confirmed again that the officials of the Respondent (and them) indeed had the authority to settle the matter, and it was agreed that the matter was settled during this meeting on the above terms.

[9] The subsequent written conduct is incompatible with a mere proposal still awaiting approval. Adv Georgiades confirmed in writing that he was "*happy with the draft order"*. Mr Mabaso later confirmed, in writing, that there had been no problem with it from the time Adv Georgiades was involved and that, *"in a nutshell*", he was happy with it. Those confirmations came after the settlement terms had been set out and after the date for an unopposed enrolment had been obtained.

[10] The draft order is clear. It records the Municipality's indebtedness in R4 966 824.79, directs the credit to the Applicant's account within ten days, and provides for costs, including the costs since inception and of the appeal, on the party-and-party scale. It is neither vague nor incapable of execution. The draft settlement order states: "*In order to settle the abovementioned indebtedness, the appellant is ordered to provide the*

*respondents with a credit in the amount of R 4 966 824,79 on the account held by the second respondent at the applicant under account number 5*******5 within 10 days of this order.*"

[11] The Municipality's change of position surfaced only when a newly briefed counsel appeared on 2 February 2023. It was not accompanied by a contemporaneous affidavit from Mr Mabaso, Adv Georgiades, Mr Ngwana or any official who participated in the negotiations. The record, however, includes Adv Georgiades' own account to the professional committee: the Municipality's officials agreed with the calculations, the Applicant was due a credit, "t*he matter became settled*", and all that remained was confirmation in court through a draft order.

The late answering affidavit and condonation

[12] The present application was served during March 2024. The Municipality did not oppose within the prescribed period. It appeared only when the matter was enrolled on the unopposed roll on 6 June 2024. Todd AJ afforded it an indulgence: it had ten days from 24 July 2024 to deliver answering papers together with a condonation application explaining their late delivery. The order included attorney and client costs in the Applicants' favour.

[13] The Municipality did not comply. Its current attorneys delivered a notice of intention to oppose on 16 August 2024, but no answering affidavit followed. The Applicants again set the application down on the unopposed roll. At 22:12 on the evening before the 13 November 2024 hearing, the Municipality served its answering affidavit and a bare condonation application. Crutchfield J removed the matter as opposed and ordered the Municipality to pay attorney and own client costs.

[14] The purported condonation case is materially confined to an apology, an assertion that a new legal team had to be obtained, and a contention that the Municipality could rely on legal argument drawn from the Applicants' papers. It does not explain the original default, the failure to comply with Todd AJ's order, the further three-month delay after that order, the precise events surrounding the change of attorneys, or what was done to obtain evidence from the officials and practitioners who attended the settlement meetings.

[15] The inquiry into condonation is not whether an apology is tendered. It is whether good cause has been shown through a full, reasonable explanation, prospects of success, *bona fides*, the effect of the delay and prejudice to the administration of justice. The explanation must enable the court to understand how the default occurred and assess the litigant's conduct and motives. The Constitutional Court in *Ekurhuleni Municipality v Rohlandt Holdings CC and Others* 2025 (1) SA 1 (CC) emphasised that an organ of state bears an enhanced responsibility to manage litigation properly.

[16] The Municipality's explanation is plainly insufficient. It has also failed to establish prospects of success. Its deponent is Mr Moenyane, the Municipality's attorney who only came on record on 16 August 2024, nearly two years after the settlement. He had no personal knowledge of the negotiations. He did not purport to identify a resolution, delegation, statutory prohibition, instruction, email, minute or Municipality official capable of refuting the Applicants' evidence. The material denials were accordingly hearsay and unsupported.

[17] Condonation is refused. In any event, if it were granted, the answering affidavit would not create a genuine dispute of fact on the material

evidence. It consists largely of legal submission and a denial by a person with no knowledge, while the Municipality elected not to obtain confirmatory evidence from those who did have knowledge. That election has consequences.

The legal principles

[18] A compromise is a contract which finally resolves disputed or uncertain rights. It generally extinguishes the compromised claims and has the effect of *res judicata*, whether or not it is made an order of court. *Road Accident Fund v Taylor and Related Matters* 2023 (5) SA 147 (SCA) affirms that, once the litigants have disposed of their disputed issues by agreement, ordinarily there is nothing left for a court to adjudicate.

[19] A court nevertheless has a well-established power to make a compromise an order. Under *Eke v Parsons* 2016 (3) SA 37 (CC)[1], the order must be competent and proper, it must relate directly or indirectly to a *lis* or issue between the parties, its terms must be legally and practically capable of inclusion in an order and consistent with the Constitution, law and public policy, and it must hold a practical and legitimate advantage. The court must exercise its discretion judicially, but must not mechanically reject a settlement which brings litigation to a sensible end.

[20] As to authority, *MEC for Economic Affairs, Environment and Tourism, Eastern Cape v Kruizenga and Another* 2010 (4) SA 122 (SCA) recognises that an attorney's general mandate does not ordinarily include authority to compromise without the client's consent. It also recognises that authority may arise in the litigation context, and that a principal may be estopped from denying an attorney's apparent authority where the

[1] at paragraphs 25 to 26

principal's own conduct created a reasonable basis for reliance. The crucial inquiry is fact-specific.

[21] The Municipality correctly referred to *Ekurhuleni Municipality v Rohlandt Holdings CC and Others 2025* (1) SA 1 (CC). That authority does not assist it on these facts. *Rohlandt* concerned a consent order requiring a municipality to acquire immovable property. That act required prior compliance with constitutional and statutory conditions, including a council decision and valuation. No agent could validly bypass those prerequisites, and estoppel could not produce an illegality. The Constitutional Court found that the agreement did not actually resolve the main eviction dispute and did not provide a useful or practical solution.

[22] Here the Municipality did not agree to acquire immovable property, procure goods or services, alienate land, grant a rates exemption or assume an extra-litigious obligation. It compromised litigation about a municipal-services account by conceding a credit against that account, in an amount below the judgment already standing against it and without interest. The Municipality identifies no statutory provision which makes such a litigation settlement invalid absent a written council resolution or written mandate. Section 116 of the *Local Government: Municipal Finance Management Act 56 of 2003* was raised only in supplementary submissions, not in the evidence. The Municipality's own supplementary heads state that counsel saw no reason to canvass its effect. There is accordingly neither a pleaded nor an evidential foundation for finding statutory non-compliance or illegality.

[23] Section 116 regulates contracts procured through a municipality's supply-chain management policy: their written terms, implementation, monitoring

and amendment. It does not regulate a compromise of pending litigation concerning a municipal-services account.

[24] This settlement neither awards nor amends a supply-chain contract. Nor did the Municipality identify any procurement contract allegedly affected, the applicable statutory safeguard, or any missing approval.

[25] The City has therefore not established statutory non-compliance or illegality. The settlement is a fiscally favourable resolution of pending litigation, not an impermissible use of public funds.

Evaluation

[26] I accept the Applicants' evidence that the agreement was concluded on 11 October 2022. It is corroborated by the sequence of communications, the conduct of the Municipality's then attorney and senior counsel, the agreed enrolment to obtain a consent order, Mr Mabaso's contemporaneous confirmation that he was satisfied with the draft order, and Adv Georgiades' later unequivocal account to the ethics committee that the Municipality's officials agreed with the calculation and that the matter had become settled.

[27] The Municipality's response does not raise a real, genuine or *bona fide* factual dispute. Mr Moenyane did not attend the meetings. He could not contradict the Applicants' attorney on what occurred there. More significantly, the Municipality did not place any affidavit from Mr Ngwana, Mr Mabaso, any other Municipality official who attended, or any person who could testify that authority was absent or that a legal precondition had not been met. A general denial based on unnamed instructions cannot discharge that burden.

[28] Counsel's position at the hearing confirms that the answering affidavit cannot bear the factual burden the Municipality seeks to place on it. Counsel acknowledged that he had no part in the settlement, asked the Court in substance to "*forget about answering affidavits*", and advanced the matter as a point of law. The Municipality had an obligation to place the facts and circumstances of any lack of authority before it, and had not done so.

[29] I accordingly treat the Municipality as having abandoned any sustainable factual challenge to the Applicants' evidence concerning the authority of the former legal team and officials. At the least, it elected not to substantiate that challenge. Counsel's argument cannot convert an evidential vacuum into a factual dispute, especially after Todd AJ expressly required the Municipality to explain in answering papers the grounds upon which it disputed authority.

[30] Even apart from the unrebutted direct evidence of actual authority, the requirements for apparent authority would be met. The Municipality held out its attorney of record, senior counsel and senior legal adviser as representatives authorised to conduct the appeal, participate in a settlement process expressly directed by the Full Court, negotiate the amount, and arrange an unopposed order. The Applicants acted on those representations, compromised a substantially larger judgment and incurred further costs in arranging the agreed enrolment. It would be inequitable for the Municipality now to disavow the authority which its conduct represented.

[31] The Municipality's reliance on the absence of a signed settlement document also fails. A compromise is not generally subject to a writing requirement. The evidence establishes consensus on the material terms.

The subsequent emails set out and approved those terms in writing in any event. The lack of a separate signed instrument cannot undo an agreement that was concluded, repeatedly confirmed and reduced to an agreed draft order.

[32] The three *Eke* requirements are satisfied: (i) the agreement directly compromises the monetary and credit dispute which gave rise to the action, the default judgment, the rescission proceedings and the pending reinstatement appeal, (ii) the proposed order creates a clear obligation to credit an identified municipal account and to pay costs. It requires no unlawful acquisition, procurement, alienation or other act for which an unmet statutory precondition has been shown, (iii) it resolves litigation that has continued since 2017, reduces the Municipality's exposure below the judgment debt, eliminates the judgment interest, and allows the Municipality to perform by passing a credit rather than a cash payment. It is both enforceable and plainly beneficial to the administration of justice.

Costs

[33] The ordinary rule that costs follow the result is not adequate. The Municipality's conduct has been dilatory and wasteful at multiple stages: its original failure to plead, its lapsed appeal, its failure to act promptly after the settlement process, its appearance without papers on the unopposed roll, its failure to comply with Todd AJ's ten-day order, its service of an answering affidavit late at night before the second unopposed hearing, and the unsupported continuation of an authority defence when the persons with knowledge were not called upon to depose to affidavits.

[34] Todd AJ had already stated that the Municipality should avoid legal expenses that could and should be avoided and warned that continuing delay might justify further punitive costs, including consideration whether responsible officials or legal representatives should bear them. The Municipality did not heed that warning. There is a real risk, if litigation continues, that further such costs will be incurred. If they are, the question will arise whether the Respondent is being properly advised by its legal representatives, whether further costs should be awarded on a punitive scale.

[35] The Applicants should not be out of pocket for the costs of compelling the Municipality to honour its bargain and confronting a late, unsupported opposition. The Municipalities litigation conduct warrants costs on the attorney and client scale, including the costs occasioned by the condonation application.

The following order is made:

[1] The Respondent's application for condonation for the late filing of its answering affidavit is dismissed.

[2] It is declared that the dispute between the Applicants and the Respondent was settled on 11 October 2022 on the terms set out in annexure NOM1 to the notice of motion.

[3] Annexure NOM1 is made an order of court, amended only as follows:

a. The Respondent is indebted to the Applicants in the amount of R4 966 824.79.

b. Within ten days of this order, the Respondent must credit R4 966 824.79 to account number 5[…], held by or for the Second Applicant.

c. The Respondent must pay the Applicants' party-and-party costs in the action and appeal proceedings, as taxed or agreed.

[4] The Respondent must pay the costs of this application, including the costs of the condonation application on the scale as between attorney and client.

N STRATHERN
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Applicant:
Adv H van der Vyver

Instructed by:
DBM Attorneys
c/o Fourie van Pletzen Incorporated

For the Respondent:
Adv E N Sithole

Instructed by:
Madhlopa & Thenga Incorporated