

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2025/094408

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

26 August 2026

DATE

SIGNATURE

In the matter between:

NDOU ATTORNEYS INC

Applicant

and

SOUTH AFRICAN MUNICIPAL WORKERS UNION (SAMWU)

Respondent

Delivered: This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of hand-down is deemed to be 21 August 2026.

JUDGMENT

TULK, AJ

Introduction

- [1] This is an application to have an alleged settlement agreement made an order of court. The settlement relates to alleged outstanding fees for legal services rendered by the applicant, Ndou Attorneys Inc, to the respondent, the South African Municipal Workers Union ("SAMWU") in eleven cases issued out of this court in 2024. Twenty-two invoices were rendered by the applicant to the respondent, two in respect of each issued case. The applicant contends that the settlement figure agreed for all the outstanding invoices was R2 012 390. 54.
- [2] In addition to an order that the settlement agreements are made orders of court, and that the respondent is directed to pay the total amount of R2 012 390, 54, the applicant seeks a further order consolidating the fee disputes. In view of my order, there is no need to deal with this issue.
- [3] The respondent opposes the application on three grounds. First, it disputes the existence of the settlement agreement. The respondent contends that the cost consultants, whom the applicant alleges concluded the settlements on behalf of the respondent, were not authorised to conclude the settlement agreements. Second, that it overpaid the applicant for legal services rendered, and intends to recover the overpayment from the applicant. Finally, it opposes the consolidation sought on the grounds that the requirements in Rule 11 of the Uniform Rules of Court have not been complied with.
- [4] The respondent also sought the leave of this court to file a supplementary answering affidavit to address the averment made by the applicant in its reply that the deponent to the answering affidavit lacks authority. In my view the supplementary affidavit must to be admitted. The question of authority was raised by the applicant in reply. The supplementary answering affidavit was thus the only procedural mechanism available to the respondent to demonstrate the authority of the deponent to the answering affidavit. It is accordingly admitted into evidence.
- [5] The applicant raised a second point in limine that the respondent failed to seek condonation for the late filing of its answering affidavit. This point too must be dismissed. Rule 6(5)(c)(ii) requires that an answering affidavit is filed and served

within fifteen (15) days of the notice of intention to oppose being filed and served. It is trite that the days referred to in the Uniform Rules are court days. The notice to oppose was filed on 3 July 2025. The *dies* for the filing of the answering affidavit expired on 24 July 2025 and the affidavit was filed on 23 July 2025. It was thus not late and no condonation application was required.

Material Facts

- [6] During 2024 the applicant issued bills of cost to the respondent for legal services rendered in respect of 11 matters issued out of this court. Thereafter the applicant issued a notice that it intended to tax the bills and the respondent appointed a cost consultant, AZ Legal (Pty) Limited (*"AZ Legal or the cost consultant"*). The applicant argued that the respondent appointed the cost consultant to consider and respond to the bills.
- [7] The applicant alleged that the cost consultants made offers to settle the 22 bills issued in respect of the 11 matters. The total outstanding indebtedness in terms of the offers made amounted to R2 012 390.54. According to the applicant it accepted the offers from the cost consultants on 10 April 2025, and reiterated its acceptance on 18 June 2025. Thus, contended the applicant, the offers are legally binding settlement agreements that this court should enforce.
- [8] The respondent opposed the application on the grounds that it does not owe Ndou Attorneys money for work done. It argued that it already paid Ndou Attorneys for all the work done and was in the process of issuing summons against Ndou Attorneys to recover an alleged overpayment between R5 000 000.00 and R12 000 000.00.
- [9] However, this summons has not been issued and this court is not seized with the alleged overpayment. Therefore, nothing more needs to be said about this allegation other than in the absence of a summons and any relief on this score being sought, the alleged overpayment is not a defence to the applicant's contention that there is a settlement agreement between it and Ndou Attorneys covering the 22 outstanding invoices.

- [10] The respondent's further defence is that while it instructed AZ Legal to consider the applicant's bills, this was to assess how much SAMWU had paid over to the applicant. According to the respondent there was never an agreement that the taxed amounts would be paid to the applicant, AZ Legal had no mandate to make the applicant settlement offers on behalf of SAMWU and SAMWU never made any offers to the applicant either directly or through AZ Legal.
- [11] Since the bills are disputed the respondent contended that the dispute was not contractual in nature. Rather, it concerned bills of costs arising from litigation which was governed by Rule 70 of the Uniform Rules of Court and this process included a notice of intention to tax, opposition to items, engagement between the parties, taxation by the taxing master and the issuing of an allocatur. It was the respondent's case that the bills are only finalised when the allocatur was issued. The respondent contended that the applicant had not taken the process to finality and sought to rely on a settlement agreement where no authority existed, no final offer was made and where there was no unequivocal acceptance and consensus reached.

Evaluation

- [12] Whether the dispute is contractual in nature or governed by Rule 70 depends on the existence of a settlement on the outstanding fees. The applicant said there was a settlement. The respondent says there was not. any. A dispute of fact thus arose on the existence of the settlement agreement, which, it is trite falls to be resolved in terms of the respondent's version, together with the admitted facts in the applicant's papers, unless the respondent's version is so far-fetched so as to be fictitious or untenable.¹
- [13] On 10 April 2025 Mr Derrick Hlungwane, the applicant's cost consultant sent a replying email to Adri Jones from AZ Legal, the respondent's cost consultant. The email to which Mr Hlungwane was purportedly responding to was not attached to the founding affidavit. However, it made reference to eleven final offers relating to the cases that the outstanding fees pertain to. Mr Hlungwane went on to record that receipt of the offers from Ms Jones was acknowledged

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634G-635A

and that the offers were accepted on a without prejudice basis. The email concluded that the acceptance was not an acknowledgment of the offer's sufficiency concerning the applicant's 'professional entitlements'. The final offers were however not attached to the founding papers.

[14] This acceptance was then followed up on 17 June 2025 when the applicant's director, Mr Ndou sent Ms Jones 11 letters. In each letter he accepted what he referred to as the final offer in respect of the amount outstanding for the relevant matter.

[15] The respondent's cost consultants did not respond to the 10 April mail or the mail of 17 June 2025. This application was issued on 25 June 2025 where Ms Jones, in a confirmatory affidavit agreed with the respondent's Mr Magagula that she had no authority to conclude settlement agreements on SAMWU's behalf.

[16] The applicant attached the bills of cost for each matter to the founding affidavit and contended that these were the final settlement offers. However, none of the bills were signed by the respondent, or a representative of the respondent. On the papers before me the respondent denied that they were final settlements on three grounds. First, because it overpaid the applicant and the applicant was in fact indebted to it. Second, the mandate of the cost consultants was to determine how much it had paid the applicant and third, the cost consultant had no mandate to settle the alleged outstanding fees due to the applicant.

[17] The first ground is of little relevance because there is no action proceedings pending in respect of the alleged overpaid fees. The defence is therefore without merit. The second and third grounds warrant some consideration. There was just no evidence that the bills of cost constitute final settlement offers. Other than to attach the bills the applicant offered no material evidence on why they were binding contracts, and how these contracts were to be interpreted.

[18] It was common cause that the email of 10 April 2025 referenced 'FINAL OFFERS', but when regard is had to the documents attached to the founding affidavit, it is by no means clear on the evidence what the handwritten and type faced numbers are meant to signify, and no version was given on the papers as to the relevance of the excel spreadsheets and their impact on the applicant's

case that there was a settlement agreement between it and the respondent. Moreover, the letters of 17 June 2025, did no more than reference contested final offers.

[19] On the papers before this court, there was simply no sufficient evidence to conclude that the bills of cost were final settlement offers as alleged.

Order

[20] In the circumstances the following order is issued:

1. The application is dismissed.
2. The applicant is ordered to pay party and party costs taxed at Scale A.

A handwritten signature in black ink, appearing to be 'TULK', is written over a solid black rectangular redaction box. A horizontal line is drawn beneath the signature.

TULK
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Appellants : HB Marais SC
Instructed : Ndou Attorneys

For the Respondent : M Botha
Instructed : McGregor Erasmus Inc

Date of hearing : 20 July 2026
Date of Judgement : 21 August 2026