



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)**

Case number: 228/2026

In the matter between:

CV PROJECTS (PTY) LTD

Applicant

and

ADAPTFIN (PTY) LTD

First respondent

**COEGA DEVELOPMENT CORPORATION (PTY)
LTD**

Second respondent

ADAPHUMELELI TRADING 1133 CC

Third respondent

BLACK BELT SECURITY EXCELLENCE (PTY) LTD

Fourth respondent

**TSOHA OIKETSETE ALUMINIUM GUTTERS
CONSTRUCTION CC**

Fifth respondent

Coram: Van Zyl, J
Heard on: 4 August 2026
Judgment: : 26 August 2026

Summary: Application to have settlement agreement made an order of court, coupled with application for interim interdict – general principles – court not making settlement agreements orders of court in the absence of pending litigation between parties to such agreement – application for transfer of application for interdict to

another Division due to lack of jurisdiction – oral application from the bar – prospects of success not a consideration to be dealt with by transferring court – order for transfer of interdict application granted

ORDER

1. The applicant's application, as set out in paragraph 2.1 of the notice of motion dated 17 April 2026, to have the settlement agreement concluded between it and the first respondent on 20 March 2026 made an order of court, is dismissed.
 2. The applicant's application for interdictory relief, as set out in paragraphs 2.2 to 2.4, read with paragraph 3, of the notice of motion dated 17 April 2026, is transferred to the High Court (Eastern Cape Division, Gqeberha) for determination, pursuant to the provisions of section 27(1)(a), read with section 27(2), of the Superior Courts Act 10 of 2013.
 3. The applicant shall pay the second respondent's costs up to and including the date of the hearing of this application on 4 August 2026, including counsel's fees taxed on Scale B.
-

JUDGMENT

VAN ZYL, J:

Introduction

1. The applicant seeks, on an urgent basis and through a *rule nisi*, to accomplish two distinct outcomes:

- 1.1 The first is to have a settlement agreement, concluded between the applicant and the first respondent, made an order of court under Rule 41 of the Uniform Rules of Court.
 - 1.2 The second is to seek an order against the second respondent, effectively for payment of a contractual debt, by means of an interim interdict.
2. Only the second respondent opposes the application, in particular in relation to the application for an interdict against it. The second respondent objected to the application having been brought as one of urgency. It appeared to me, however, that given the postponement of the matter after it had initially been set down, the question of urgency (or the lack thereof) was no longer live, and should not stand in the way of dealing with the merits of the parties' dispute. I accordingly heard full argument.
3. There are various disputes on the papers, but in oral argument counsel confined the argument to two issues: should the settlement agreement be made an order of court, and should the remainder of the relief (that is, the application for interim interdictory relief against the second respondent) be transferred to another Division of the High Court? These are dispositive of the application, at least at this stage.
4. The second issue arose because the parties were, by the time the matter was argued, in agreement that this court does not have the territorial jurisdiction to determine the relief sought against the second respondent.
5. I discuss these two issues below.

Making the settlement agreement an order of court

6. The applicant and the first respondent concluded a settlement agreement on 20 March 2026, in which those parties made arrangements for the fulfilment

of certain contractual obligations that the applicant had undertaken as regards the first respondent.

7. Rule 41 of the Uniform Rules of Court regulates the “*withdrawal, settlement, discontinuance, postponement, and abandonment*” of proceedings. Rule 41(4), upon which the applicant relies, provides as follows:

“Unless such proceedings have been withdrawn, any party to a settlement agreement which has been reduced to writing and signed by the parties or their legal representatives but which has not been carried out, may apply for judgment in terms thereof on at least five days’ notice to all interested parties.”

8. A plain reading of the provision suggests that a settlement may be made an order of court pursuant to the settlement of proceedings – and thus a *lis* – between the parties involved. In *Eke v Parsons*¹ the Constitutional Court held that, for an order to be competent and proper, it must satisfy, amongst others, the following requirement:

“[25] This in no way means that anything agreed to by the parties should be accepted by a court and made an order of court. The order can only be one that is competent and proper. A court must thus not be mechanical in its adoption of the terms of a settlement agreement. For an order to be competent and proper, it must, in the first place, 'relate directly or indirectly to an issue or lis between the parties'. Parties contracting outside of the context of litigation may not approach a court and ask that their agreement be made an order of court. On this Hodd says: 'If two merchants were to make an ordinary commercial agreement in writing, and then were to join an application to court to have that agreement made an order, merely on the ground that they preferred the agreement to be in the form of a judgment or order because in that form it provided more expeditious or effective remedies against possible breaches, it seems clear that the court would not grant the application.' That is so because the agreement would be unrelated to litigation.”

¹ 2016 (3) SA 37 (CC) para 25. My emphasis. See also *Wolmarans NO and others v Standard Bank of South Africa Ltd* 2026 (1) SA 547 (SCA) para 57.

9. In *Valor IT v Premier, North West Province*² the Supreme Court of Appeal explained:

“[52] In Eke v Parsons, a contractual dispute between two private individuals, the Constitutional Court considered the nature and effect of settlements being made court orders. Madlanga J held that, first, it is not anything agreed to by the parties that can be made an order: the order must be ‘competent and proper’ in the sense that it relates to the dispute with which the court was seized.”

10. This principle was confirmed by the Constitutional Court in *Ekurhuleni City v Rohlandt Holdings CC and others*:³

“[48] ... Eke requires that, before a court makes a settlement reached between the parties an order of court, it must be ‘competent and proper’. This requires that — (a) the consent order must relate directly or indirectly to a lis (lawsuit) or issue between the parties;

...

[50] Eke encourages a generous approach to this requirement, so as not to burden parties unduly, or deter them from settling their litigation. Thus ancillary or related matters, not strictly central to the litigation, might form part of an approved settlement. Absent such an approach, two settlement agreements might be required to cover those issues relevant to a dispute, and those not, or a settlement might fail because clauses important to one or both of the parties could not receive the benefit of the court’s sanction. On the other hand, a legal agreement reached entirely outside the context of litigation cannot be made an order of court.”

11. There is a glaring absence of details in the founding affidavit regarding the dispute – in the sense of “proceedings” – between the applicant and the first respondent, upon which the applicant relies for seeking an order that the settlement be made an order of court. The only reference to proceedings is to be found on the first page of the settlement agreement, which records that the first respondent “*has commenced with legal proceedings*” against the

² 2021 (1) SA 42 (SCA) para 52. My emphasis.

³ 2025 (1) SA 1 (CC) paras 48-50 (my emphasis). See also *Mafisa v Road Accident Fund* 2024 (4) SA 426 (CC) paras 39-40.

applicant. The settlement agreement does not indicate what the fate of any such proceedings is given the resolution of the parties' dispute. There is no indication as to the court in which the proceedings were pending, and no case number.

12. The settlement agreement, moreover, records that the parties consent to the court's jurisdiction. There would hardly be a need for such a recordal if there was pending litigation over which a court had jurisdiction.
13. The replying affidavit is bare, too, despite an express invitation to the applicant in the second respondent's answering to identify the proceedings giving rise to the settlement agreement. In fact, one gleans from the replying affidavit that whilst the first respondent pushed the applicant for payment, the dispute did not go as far as the institution of legal proceedings in a competent court.
14. Counsel for the applicant conceded in argument that he "*could not take the matter any further*" on the facts. He nevertheless argued that the settlement agreement resolved a dispute between the applicant and the first respondent, and that "dispute" should be interpreted widely to encompass situations where the parties had not yet ventured into litigation, but were contemplating litigation. This is so because (as I understand the argument) in *Eke v Parsons* the Constitutional Court stated that the settlement agreement must relate either directly or "*indirectly*" to an "*issue*" or *lis* between the parties.
15. Counsel contended that the Constitutional Court in *Eke v Parsons* confirmed in paragraph 25 of its judgment, quoted above, only a portion of what was stated in *Ex parte Le Grange and another: In re Le Grange v Le Grange*,⁴ namely that a settlement agreement must "*relate directly or indirectly to an*

⁴ [2013] ZAECHC 75 para 15, also reported in the South African law reports as *PL v YL* 2013 (6) SA 28 (ECG): " ... the court must satisfy itself that the parties are in agreement that the terms of their settlement be made part of the order of the court. ... it must be competent for the court to make the settlement agreement an order. That is, it must relate directly or indirectly to an issue or *lis* between the parties that is properly before the court, and in respect whereof, but for the settlement agreement, it would possess the necessary jurisdiction to entertain it."

issue or lis between the parties". Thus, so the argument went, the Constitutional Court left the door open for counsel's suggested wide interpretation of the point at which the settlement agreement is concluded. He could not explain, when asked by the court, where the line would be drawn as to the point during negotiations at which litigation would be "*contemplated*".

16. The applicant's submissions are unsustainable. The opinion expressed in *Eke v Parsons* (and the judgments that followed it) is, with respect, sound, and is the authoritative law. This court is bound to apply it. It has no discretion to do otherwise. I fail to see how the Constitutional Court's quotation of an extract from *Le Grange*, in the context of a discussion of what are established principles, could result in the open door for which counsel contends. It is in any event clear from the judgments that followed *Eke v Parsons* that the established principles remain unaffected.
17. In the circumstances, the applicant and the first respondent's settlement agreement, concluded outside of litigation pending between those parties, cannot be made an order of court.

Transfer of the interdict application to another Division

18. Sections 21(1) and 21(2) of the Superior Courts Act 10 of 2013 (the SCA Act) provide as follows:⁵

(1) *A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance ...*

(2) *A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.*

⁵ My emphasis.

19. I have indicated that the parties are in agreement that this court lacks the jurisdiction to determine the application for interim interdictory relief against the second respondent. This is undoubtedly correct.
20. The second respondent is squarely located in Gqeberha, and no part of the contractual cause of action relied upon by the applicant as against the second respondent took place in the Western Cape, within the jurisdiction of this court. Section 21(1) of the SC Act therefore does not assist the applicant. The dispute between the applicant and the second respondent is not related to the applicant's cause against the first respondent, as the second respondent is not a party to the settlement agreement (which was concluded in George). The second respondent has not been joined to the proceedings by way of a third party notice. There is no *nexus* between the attempt at making the settlement agreement an order of court, and seeking interdictory relief against the second respondent. There is thus no underlying cause between the applicant and the second respondent relative to this court's jurisdiction. It follows that section 21(2) of the SC Act also cannot come to the applicant's rescue.
21. Section 27 of the SC Act provides as follows:⁶

Removal of proceedings from one Division to another or from one seat to another in same Division

- (1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court that such proceedings —*
- (a) should have been instituted in another Division or at another seat of that Division; or*
- (b) would be more conveniently or more appropriately heard or determined —*
- (i) at another seat of that Division; or*
- (ii) by another Division,*
- that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be.*

⁶ My emphasis.

(2) An order for removal under subsection (1) must be transmitted to the registrar of the court to which the removal is ordered, and upon the receipt of such order that court may hear and determine the proceedings in question.

22. Section 27 of the SC Act replaced section 9 of the now repealed Supreme Court Act 59 of 1959, which provided for the removal of civil proceedings from one High Court to another upon application by any party if such proceedings could be more conveniently heard by the other court. Section 27 was foreshadowed by section 3 of the Interim Rationalisation of Jurisdiction of High Courts Act 41 of 2001 (now repealed) which contained a similar provision but added another ground for removal, namely that the proceedings should have been instituted in another High Court. Section 27 of the SC Act substantially replicates the provisions of section of the Interim Rationalisation of Jurisdiction of High Courts Act.⁷

23. Section 27(1)(a) does not require that this court must have jurisdiction before it can transfer proceedings to another court:⁸

“[17] ...It, in my view, is apparent from the wording of s 3(1)(a) of the Act⁹ that it envisages the removal of civil proceedings which have been instituted in a Court other than one in which it should have been instituted (ie one without jurisdiction) to another Court where it should have been instituted (ie one with jurisdiction). In my view that subsection, at least by clear implication, empowers a High Court which does not enjoy jurisdiction to order the removal of any civil proceedings before it to another Court which enjoys jurisdiction and in that manner brought about a pro tanto statutory amplification of the jurisdiction of High Courts.”

24. Counsel for the second respondent did not oppose the application for a transfer very strenuously. He nevertheless submitted that the applicant should have brought a substantive application, on notice, to seek such

⁷ See the discussion in Van Loggerenberg *Erasmus Superior Court Practice* (Jutastat online version, RS 5, 2025) at D-248ff; Cilliers *et al Herbstein & van Winsen The Civil Practice of the High Courts of South Africa* (5ed, Juta, 2009) at Vol. 1 p 774.

⁸ *Gumede v Road Accident Fund* 2007 (6) SA 304 (C) para 17.

⁹ The Interim Rationalisation of Jurisdiction of High Courts Act 41 of 2001.

transfer. I agree that that is the general route to follow.¹⁰ I can, however, not see that there is any significant prejudice to the second respondent if I entertain the oral application from the bar.¹¹ The second respondent had raised this court's lack of jurisdiction in its answering papers, and the possibility of transfer was fully argued even though it was only raised at the outset of oral argument. Applications for postponements, amendments to pleadings, and other interlocutory rulings are often requested in this manner, perhaps less frequently these days as patterns of practice have changed over the years, but it nonetheless remains possible.

25. Counsel for the second respondent argued further that there is no point in transferring the matter to another court, as the applicant's prospects of success in obtaining the interdictory relief sought are remote. Whatever my views are on the merits of the interdict application, I do not think that that is a factor that should (or can) be taken into account in relation to a transfer under section 27(1)(a). This court does not have any jurisdiction to determine the merits of the application. It would be illogical for it to have the power to express an opinion on the prospects of success in considering whether to order a transfer. As stated in *Road Accident Fund v Rampukar; Road Accident Fund v Gumede*:¹²

"[10] As I see it, s 3(1)(a),¹³ on its own wording, deals with the situation where the proceedings should have been instituted in 'the other court', ie the transferee court. This can only mean that they should not have been instituted in the court where they were in fact instituted, ie the transferring court. ... in the context of an Act dealing with jurisdiction, the only reason I can think of is that the transferring court lacked jurisdiction to determine the dispute between the parties under s 19(1) of the Supreme Court Act. In these circumstances, s 3(1)(a) does not bestow the

¹⁰ Erasmus *op cit* at D-254A.

¹¹ See, for example, the reference in Erasmus *op cit* fn 46 to *Ntambo v President of the Republic of South Africa* (unreported decision of the Gauteng Division of the High Court under case number 51179/2021, dated 10 March 2023) which held at para 32 that section 27 of the SC Act does not require a substantive application, and that an application moved from the bar pursuant to the issue of removal of the case to another Division of the High Court having been raised in the answering affidavit as a point *in limine*, met the requirement of the subsection.

¹² 2008 (2) SA 534 (SCA) para 10. My emphasis.

¹³ Of the the Interim Rationalisation of Jurisdiction of High Courts Act 41 of 2001.

transferring court with jurisdiction to entertain and decide the main dispute; all the section does is to afford the transferring court the limited jurisdiction - which otherwise it would not have had - to transfer the matter to the 'right' court, ie the court with proper jurisdiction to determine the dispute under s 19(1) of the Supreme Court Act. Thus understood, I think the situation that s 3(1)(a) seeks to address is obvious. It is the one where a plaintiff has wrongly instituted proceedings in the transferring court instead of the transferee court and now seeks a transfer from the former to the latter."

26. The position is obviously different where a transfer under section 27(1)(b) of the SCA Act is sought, because in such a case a court may take into account various factors to determine the aspect of convenience, and whether a transfer should, in the exercise of the court's discretion in that context, be ordered.¹⁴
27. In these circumstances, the appropriate route is to transfer the remainder of the application – the application for interdictory relief – to the court with the necessary jurisdiction to hear it.

Costs

28. I regard the second respondent as having been substantially successful up to this point in the proceedings. There is no need for another court to have to consider the arguments that served before me, in order to come to a decision on costs at the end of the matter. I therefore intend to grant the second respondent its costs up to the date upon which the application was argued before me. Counsel's fees will be taxed on Scale B, as contemplated in Rule 67A, read with Rule 69.

Order

29. In the premises it is ordered as follows:

¹⁴ *Nongovu NO v Road Accident Fund* 2007 (1) SA 59 (T) at 64H–65J.

1. The applicant's application, as set out in paragraph 2.1 of the notice of motion dated 17 April 2026, to have the settlement agreement concluded between it and the first respondent on 20 March 2026 made an order of court, is dismissed.
2. The applicant's application for interdictory relief, as set out in paragraphs 2.2 to 2.4, read with paragraph 3, of the notice of motion dated 17 April 2026, is transferred to the High Court (Eastern Cape Division, Gqeberha) for determination, pursuant to the provisions of section 27(1)(a), read with section 27(2), of the Superior Courts Act 10 of 2013.
3. The applicant shall pay the second respondent's costs up to and including the date of the hearing of this application on 4 August 2026, including counsel's fees taxed on Scale B.

P. S. VAN ZYL

Judge of the High Court

Appearances:

For the applicant:

Instructed by:

Mr C. E. Thompson

W J Bezuidenhout Inc.

For the second respondent:

Instructed by:

Mr I. Lambrechts

McWilliams & Elliot Inc.