



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

Case No.: 66/2024

Appeal Case No: A2026-049216

(1) (2) (3)	REPORTABLE: NO OF INTEREST TO OTHER JUDGES: NO REVISED YES
<u>03/09/2026</u> DATE	 SIGNATURE

In the matter between:

GOODWILL MDUDUZI THIMBA

APPELLANT

and

THE ROAD ACCIDENT FUND

RESPONDENT

Coram: **RATSHIBVUMO AJP, NOBANDA *et* FOURIE AJJ**

Heard: 21 August 2026

Delivered: This judgment was handed down by uploading to CaseLines
on 03 September 2026.

ORDER

The Appeal is dismissed.

JUDGMENT

FOURIE AJ:

Introduction.

- [1] This is an appeal against the whole judgment and order of Tshetlo AJ, of this Division (court *a quo*), delivered on 22 August 2025, in which the Plaintiff's claim for loss of earnings was dismissed with costs.
- [2] Leave to appeal, having been refused in the court a quo, was subsequently granted to this Court by the Supreme Court of Appeal upon the Appellant's petition.

Background.

- [3] The Appellant instituted action in the court *a quo* against the Respondent for several heads of damages arising from a motor vehicle accident in which he was involved.
- [4] The Appellant, when lodging his RAF1 form with the Respondent, indicated that a claim was proposed to be instituted for general damages in the amount of R 4 million, and no intended claim in respect of loss of earnings or past and future medical expenses was listed.
- [5] However, when the Appellant ultimately issued Summons against the Respondent, he claimed the following heads of damages:
- a. An undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 (the Act), for future medical expenses;
 - b. R 100 000.00 for past medical expenses;
 - c. General damages in the amount of R 2 million;
 - d. Future loss of earnings in the amount of R 3 million; and
 - e. Past loss of earnings in the amount of R 2 million.
- [6] With the trial date for the matter looming, and on 28 January 2025, the Respondent advanced to the Appellant an Offer of Settlement in full and final settlement of the Appellant's claim.¹

¹ See Casel Lines Bundle 025-26

[7] The following material facts in respect of the settlement offer deserve to be highlighted:

7.1 The offer is marked ‘without prejudice’.

7.2 The preamble of the agreement states the following:

‘The RAF hereby offers, without prejudice or admission of liability, in **full and final** settlement of **your claim**, the amount as set out hereunder.’ (Emphasis added).

7.3 The table dealing with the ultimate offer made under the respective heads of damages reflects as follows:

SECTION A: CAPITAL PAYMENT DETAILS AND BREAKDOWN

	PAST	FUTURE	TOTAL
HOSPITAL /MEDICAL EXPENSES	R 0.00	R 0.00	R 0.00
LOSS OF SUPPORT	R 0.00	R 0.00	R 0.00
LOSS OF EARNINGS	R 0.00	R 0.00	R 0.00
FUNERAL COSTS			R 0.00
GENERAL DAMAGES (Pain & Suffering, Permanent disability, etc)			R 700 000.00
		SUB-TOTAAL	R 700 000.00
Minus: Apportionment	Percentage: 20%		R 140 000.00
		SUB-TOTAAL	R 560 000.00
Minus: Risk	Percentage: 0%		R 0.00
		SUB-TOTAAL	R 560 000.00
Minus: Interim Payments			R 0.00
		SUB-TOTAAL	R 560 000.00
Minus: WCC Award (Workman's Compensation)			R 0.00
		SUB-TOTAAL	R 560 000.00
		GRAND TOTAL	R 560 000.00

7.4 An undertaking in terms of Section 17(4)(a) was provided.

7.5 The agreement expressly stated, as per a disclaimer on the part of the Appellant, that:

7.5.1.1 ‘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 loss suffered in the above-mentioned accident.’ (Emphasis added).

7.6 As to how the offer was to be accepted, the agreement stated:

7.6.1.1 ‘This offer can only be accepted by full completion and on receipt of the signed original document. Any amendment to this form will not constitute settlement of this claim unless such amendment is expressly agreed on by the fund.’

7.7 In respect of acceptance, the agreement further stated that:

7.7.1.1 ‘Acceptance of this offer will only be deemed valid acceptance if it is accepted in its totality. 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 counteroffer by the Claimant and will not be deemed to constitute a valid agreement, unless the Road Accident Fund expressly accepts the counteroffer.’

7.8 The offer was accepted, and the agreement was signed and countersigned on 20 January 2025 by the Appellant.

[8] On 03 February 2025, after settlement of the matter by countersigning the settlement agreement, the parties appeared before the settlement court. During such appearances and at the request of the parties, the following order was made:

1. The Settlement Agreement is made an order of court.
2. The trial for the issue of past and future loss of earnings is postponed to 10 March 2025, as matter No 15 on the roll.
3. Cost of suit on High Court Scale to be taxed.’

- [9] After the settlement of the claim, the Appellant proceeded on 21 February 2025 to file an ancillary RAF1 form, seeking to introduce new heads of damage seemingly for loss of earnings. The filing of the new RAF1 form on the part of the Appellant triggered a response by the Respondent to file a notice of intention to amend its plea, dealing therein with a lack of compliance with Sections 24(6) and 19(f) of the Act, and the issue of *res judicata* premised thereon that the Appellant's claim was settled in its entirety.
- [10] The ultimate amendment of the respondent's plea under the auspices of Rule 28 of the Uniform Rules of Court did not occur for reasons that are not evident from the appeal record.
- [11] At the commencement of the trial as set down, both the previously anticipated special pleas were canvassed with the court *a quo*, and submissions were made by the respective legal representatives representing the parties on all the issues presented to the court.
- [12] Flowing from the submissions made, the court *a quo* found that the Plaintiff's claim and the extent of the heads of damages as per the Appellant's Particulars of Claim are impermissibly wider than the claim lodged in the initial RAF1 form. It further concluded that, as a result of the settlement, the matter between the Appellant and the Respondent is *res judicata*.
- [13] Premised on the aforesaid, the Court *a quo* ordered as it had.

Issues on appeal.

- [14] The Appellant predicated the appeal on two grounds, namely:

[14.1] “The court *a quo* erred in finding that the Appellant’s claim and heads of damages according to the Particulars of Claim are impermissibly wider than the claim lodged in the RAF1 form and that all heads of damages that were not set out in the RAF1 form (but sought to be advanced in the Particulars of Claim) are accordingly unacceptable claims under the RAF Act, and no such claim is legally enforceable as it is against the RAF Act ‘*sic*’.

[14.2] The court *a quo* erred in finding that the settlement that was made an order of court on 11 February 2025 (order by Mangena AJ), was a full and final settlement of the entire claim for the following reasons:

[14.2.1] Both parties were represented, and the settlement agreement was made an order of court. The Respondent agreed to a postponement of the claim action for loss of income to 10 March 2025; and

[14.2.2] Neither the Draft Order nor the Court Order states that the settlement was a full and final settlement in respect of all heads of damages; rather, it states that it was a settlement conceding liability at an 80/20 apportionment, payment for general damages, and an undertaking.”

***Mero motu* questions of law.**

[15] The issues ultimately before the court *a quo*, which were raised in the current appeal, do not arise from the pleadings of the respective parties. They include:

15.1.1.1. The filing of a further RAF1 form.

15.1.1.2. The proposed Special Plea pertaining to the objection to the further RAF1 form; and

15.1.1.3. The Special Plea that the Respondent was of the intention of raising under the auspices of *res judicata*, dealing in essence with the settlement of the matter between the respective parties.

[16] In *Fischer and Another v Ramahlele and Others*² the Supreme Court of Appeal emphasised the adversarial nature of the South African civil procedure and held that it is for the parties to define the only issues, that the court is to adjudicate on, and that it is not for a court to raise new issues not traversed in the pleadings or affidavit, however interesting or important they may seem to it.

[17] The court, however, emphasised that there may be instances in which a court may, *mero motu*, raise a question of law that emerges fully from the evidence and is necessary for the decision of the case. That is subject to the proviso that no prejudice will be caused to any party by its being raised.

² [2014] ZASCA 88; 2014 (4) SA 614 (SCA)

- [18] The principles in the matter of *Fischer, supra*, were confirmed in the matter of *Molusi and Others v Voges N.O and Others*³. Although the issues dealt with by the court *a quo* did not emanate from the pleadings, they would ultimately lead to a conclusion of the matter. The Court *a quo* was justified in dealing with them, irrespective of whether the pleadings were amended prior to the commencement of the trial. Neither the Appellant nor the Respondent took issue at the time with the court dealing with the points of law, and neither party could accordingly raise any prejudice in respect of such.
- [19] Although not addressed as a confined ground of appeal, this Court found it necessary to elaborate on this point, as much of the Appellant's argument centres on the court *a quo* engaging with issues it ought not to have done.

Res Judicata.

- [20] For reasons that will follow, the Court first addresses whether the court *a quo* was correct in finding and upholding the Special Plea regarding *res judicata*. If the issues between the parties are found to have been settled prior to the trial before the court *a quo*, there would be no live disputes remaining between the parties to be determined. If this Court accepts that the parties had settled their litigious dispute, such settlement would terminate the Court's authority or jurisdiction to pronounce on the litigious dispute.⁴

³ 2016 (3) SA 370 (CC) at para 28

⁴ *Mafisa v Road Accident Fund and Another* (CCT 156/22) [2024] ZACC 4; 2024 (6) BCLR 805 (CC); 2024 (4) SA 426 (CC) (25 April 2024) at 53

[21] As in the matter of *Mafisa, supra*, this Court is not requested to pronounce on the validity and terms of the settlement agreement between the parties; as such, they are not in dispute, and the Court will not be open to pronounce on same.

[22] In the current matter, the settlement agreement in its current form was neither challenged nor rectified.

[23] The Supreme Court of Appeal in the matter of *Tosholo v Road Accident Fund*⁵ has already scrutinised and evaluated the terms of offers of settlement by the current Respondent, and the implication for a Plaintiff, or in this case an Appellant, who signs and accepts such an offer without qualification.

[24] This Court can do no better than to repeat what was stated by Molefe JA, where it was stated that:

‘[10]. The issue in this Court is whether the appellant’s claim was compromised and settled. A compromise is founded on the prescribed principles of offer and acceptance, and involves each party making a concession, either by reducing their purported claim or by acknowledging their liability.⁶ It is important to ensure that there is a clear offer to compromise, and a transparent acceptance of the settlement offer when a claim is settled and a compromise is attained.⁷ Therefore, the language of an offer to compromise in order to resolve a conflict must be precise and definite.

⁵ (875/2023) [2025] ZASCA 21 (19 March 2025)

⁶ R H Christie, *The Law of Contract in South Africa* (2022) 8th edition at 557.

⁷ *Ibid.*

[11] If the compensation made by the debtor is considered an offer of compromise (*animo contrahendi*), which the creditor agrees to, the creditor usually loses the right to pursue the debtor further.⁸ Accepting an offer of compromise without reservation or restrictions to the debtor's offer of compromise is typically understood to be done with the implicit, if not explicit, stipulation that the creditor abandons any right to pursue the remainder of their claim.

[12]. The legal position on how a court should deal with a settlement agreement was confirmed by the Constitutional Court in *Mafisa v Road Accident Fund and Another (Mafisa)*,⁹ where it was stated that '[c]ontractual agreements concluded freely and voluntarily by the parties ought to be respected and enforced. This is in accordance with the established principle *pacta sunt servanda* (agreements must be honoured)'.¹⁰ The Court further held that, as a general rule, a judge should not interfere with the terms of a settlement agreement.¹¹ This Court found that a compromise puts an end to the *lis* between the parties and has the effect of *res judicata*. Courts must therefore exercise restraint to ensure that there is no undue imposition on the parties' contractual freedom.¹²

[13] In *Burt N O v National Bank of South Africa*,¹³ this Court held that:

'The tender is made for the purpose of settling the action, and neither the person who makes the offer nor the person who accepts it can possibly have any misconception as to its meaning. If, therefore, a plaintiff unreservedly accepts an offer made in those terms, he must be taken to accept it, with the condition attached that he shall abandon the

⁸ Be Bop A Lula Manufacturing & Printing CC v Kingtex Marketing (Pty) Ltd [2006] ZAWCHC 72; 2006 (6) SA 379 (C) at 392H-J.

⁹ *Mafisa supra*

¹⁰ *Ibid* para 36.

¹¹ *Ibid* para 50.

¹² *Road Accident Fund v Taylor and Other Matters* [2023] ZASCA 64; 2023 (5) SA 147 (SCA) paras 37-42 and 51.

¹³ 1921 AD 59 at 67.

balance of his claim, and in these circumstances it is, to my mind, inconceivable that he can retain the money and at the same time be allowed to sue for the balance of the claim.’

[14]. An agreement of compromise therefore has the effect of discharging the existing obligations of the debtor and the creditor’s claim will be regarded as finally adjudicated upon (*res judicata*).¹⁴ Compromise is a settlement of disputed obligations by agreement. Any litigation following the settlement will relate to non-compliance with the settlement agreement and not the original dispute.

[15] When the legal principles set forth are applied to the facts in this matter, a clear picture emerges. The ‘offer and acceptance of settlement’ prepared by the RAF, dated 25 September 2013, and signed by the appellant on 18 November 2013, clearly indicated that the settlement was in full and final settlement of the appellant’s claim. It also confirmed that the RAF was discharged from all liability pertaining to the loss suffered in the accident.

[16] In addition, the appellant warranted as follows:

‘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.’

[17] This was a written contract. There was no basis on the pleadings or evidence to impugn it. Nor could evidence be led to contradict its terms. Nor was it pleaded that the agreement was subject to rectification. It is

¹⁴ The principle is that, generally, parties may not again litigate on the same matter once it has been determined on the merits.

clear that the agreement of compromise was binding on the appellant. That means that no *lis* between the parties remained.

- [25] The Appellant failed to address the issues enunciated in *Tosholo* in their argument. There is no reason to believe that the principles as stated in *Tosholo* ought not to be rigidly applied by this Court.
- [26] From a mere evaluation of the settlement agreement entered into between the parties, it is evident that each head of damage as claimed by the Appellant was considered and an appropriate value that the Respondent wished to offer to the Appellant was assigned to such claim. The offer of settlement also dealt with issues not found in the initial RAF1 Form, and an offer by way of undertaking in terms of Section 17(4)(a) was made even though no such claim was present on the initial RAF1 form. Similarly, the Respondent addressed the issue of loss of earnings, and it is evident that the Respondent offered R 0.00 to the Appellant in respect of this head of damage. The offer of settlement accordingly dealt with the whole of the Appellant's claim, nothing excluded.
- [27] Confronted with the offer of settlement, the Appellant knew that by accepting the offer of settlement it would settle each and every dispute between him and the Respondent. The offer of settlement was not silent on any issues, nor was there any waiver or disclaimer indicating that certain heads of damages were not considered or included. The settlement agreement expressly stated that by signing it, all issues between the parties would be settled.
- [28] By signing the agreement, as in the matter with *Tosholo*, the *lis* between the parties was removed, and, as such, no issues remained alive for a court to deal with.

- [29] The Appellant's attempts to reason that the order made by Mangena AJ somehow revives the *lis* between the parties specifically pertaining to loss of earnings, is simply incorrect and fatally flawed.
- [30] The order by Mangena AJ made no pronouncement on the amendment of the settlement agreement nor did it ratify the agreement in any way as the Appellant seems to believe. Insofar as any party, in this case the Appellant, wished to refer any issue to the Court to adjudicate, Mangena AJ ordered the **issue** of loss of earnings to the Court *a quo*. Mangena AJ did not pronounce that there existed a *lis* between the parties in respect of the issue of loss of earnings, and when the court *a quo* was confronted with the Appellant's claim for loss of earnings, it correctly found that the matter was *res judicata* and that the court was precluded from dealing with the matter in any way further.
- [31] This Court cannot fault the reasoning of the court *a quo*, and as such this ground of appeal cannot be sustained.

First Ground of appeal.

- [32] Having ultimately found that the matter was *res judicata*, it was unnecessary for the court *a quo* to deal with any other issues before it at the hearing, other than costs.
- [33] It becomes academic and irrelevant for this Court to deal with whether the Appellant's claim in his Particulars of Claim was impermissibly wider than the claim lodged in the RAF1 Form, as Appeal Courts are not designed to deal with moot issues. The issues under this ground of appeal

also do not concern a discrete point of law of public importance, nor does the interest of justice dictate that this Court should entertain them .

- [34] This issue is not novel and was already dealt with in *Nonkwali v Road Accident Fund*¹⁵ where Maya JA (as she then was) held that:

‘[10] In the event, the claim for damages relating to the appellant’s head injury did not constitute a new cause of action but was merely an additional item to her original cause of action. The appellant’s amendment to her summons did, therefore, interrupt the running of prescription in respect of the further claim. It was thus not necessary for her to lodge an amended claim form.’¹⁶ ‘

- [35] This principle was applied as recently as 30 April 2026 in this Court¹⁷. It was unnecessary for the Court *a quo* to address any issue other than *res judicata*, and similarly this Court will be confined to that issue. It could be that the Respondent was alive to this approach when, in its settlement offer, it addressed heads of damages that were not referenced in the initial RAF1 Form.

Costs.

- [36] The matter remained unopposed and as such this Court finds no reason to make any cost order that either follows the result or otherwise.

¹⁵ (105/2007) [2008] ZASCA 3; [2008] 2 All SA 503 (SCA); 2009 (4) SA 333 (SCA) (6 March 2008)

¹⁶ *Boti v Unie en Nasionale Versekeringsmaatskappy, Bpk* 1968 (4) SA 567 (O).

¹⁷ *Mathebula v Road Accident Fund* (2436/24) [2026] ZAMPMBHC 38 (30 April 2026)

Order.

[37] For the aforesaid reasons, the appeal cannot succeed, and the following Order is proposed:

[37.1] The Appeal is dismissed.



HF FOURIE
ACTING JUDGE OF THE HIGH COURT,
MPUMALANGA DIVISION

I agree



PL NOBANDA
ACTING JUDGE OF THE HIGH COURT,
MPUMALANGA DIVISION

I agree, and it is so ordered.



TV RATSHIBVUMO
ACTING JUDGE PRESIDENT
MPUMALANGA DIVISION

Counsel for the Appellant: ADV S MBHALATI
Instructed by: MFUNDO MOGALE
Cell: 063 049 4524
Email: info@mpmogaleattorneys.co.za

Counsel for the Respondent: NO APPEARANCE