

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT**

Case no. 2025-182522

REPORTABLE

In the matter between:

TRANSNET PROPERTY

Plaintiff/Applicant

and

BUFFALO CITY METROPOLITAN

MUNICIPALITY

Defendant/Respondent

JUDGMENT

STRETCH J.:

[1] The plaintiff is Transnet Property which is a state-owned company more fully described as a division of Transnet SOC¹ Limited. The defendant is Buffalo City Metropolitan Municipality, being a municipality contemplated in terms of section 2 of the Local Government Municipal Systems Act 32 of 2000 (“the Systems Act”). The parties will hereinafter be referred to as Transnet and BCMM.

¹ SOC is an acronym for State-Owned Company.

[2] It is common cause that BCMM is/was a lessee of premises at Orient Theatre Complex, KuGompo, in terms of a rental agreement with Transnet. During April 2025, Transnet and BCMM entered into a written agreement, in the form of an acknowledgment of debt. Ex facie the agreement, so it is pleaded, BCMM acknowledged its indebtedness to Transnet in the sum of R12 565 339,25 for, inter alia, arrears rental due to Transnet in respect of the lease agreement which the parties had entered into previously. One of the terms of the acknowledgment of debt was that BCMM would make payment in respect of the arrears in 12 equal instalments of R1 047 111,60 per month, commencing on 31 July 2025. Any default would result in the full sum of the arrears with interest becoming due and payable immediately, and Transnet would be entitled to proceed for the immediate recovery of the outstanding debt without notice to BCMM. In the event of summons already having been issued, the acknowledgment of debt would be made an order of court, followed by appropriate legal proceedings including a claim for, inter alia, attorney and client costs, should BCMM also default in terms of the court order. Any document purporting to be a certificate of balance would be prima facie proof of the indebtedness with sufficient probative value for Transnet to obtain summary judgment or provisional sentence against BCMM in any court for the amount stated in the certificate. The acknowledgment of debt further states in mandatory terms, that in the event of “the matter” having proceeded to litigation, a settlement agreement had to be concluded by the parties, containing all the express provisions agreed to by them in respect of the subject matter of the agreement.

[3] It is not in dispute that pursuant to having entered into the agreement, BCMM has not made a single payment towards the rental of the premises. As a consequence, Transnet elected to enforce its rights to proceed with legal action

in terms of the acknowledgment of debt, for the recovery of the full outstanding balance.

[4] In accordance with the terms of the acknowledgment of debt, Transnet and BCMM duly entered into a settlement agreement during May 2025, in respect of all the monies due. The settlement agreement is, for all intents and purposes a mirror image of the acknowledgment of debt, in essence substituting it by way of novation as the entire and sole agreement and understanding between the parties with respect to the debt described. It also provides for either of the parties to give the other seven days' written notice to rectify any breach referred to in the settlement agreement, before pursuing any contractual remedies at its disposal.

[5] BCMM failed to pay the first instalment on or before 31 July 2025 in accordance with the settlement agreement. During August 2025 Transnet gave BCMM seven days' notice to rectify this breach. BCMM failed to do so. About two weeks later, on 27 August 2025, Transnet's attorneys addressed a further demand to BCMM and its attorneys, to no avail. According to Transnet's claim, BCMM did not respond to the demand and made no effort to cure the breach.

[6] On 2 October 2025 Transnet instituted action against BCMM for payment of the R12 565 339,25, together with interest and costs on an attorney and client scale. BCMM filed its plea to Transnet's claim five months later, on 5 March 2026. Therein it raised a special plea, purportedly in terms of s 45 of the Intergovernmental Relations Framework Act 13 of 2005 ("the IRFA"). The special plea reads as follows:

1. Section 45 of the Intergovernmental Relations Framework Act 13 of 2005 prohibits legal proceedings between Organs of State or Institutions of the State,

unless an intergovernmental relations dispute has been declared and all negotiations have failed.

2. The parties attended an intergovernmental relations facilitation by the National Minister of Cooperative Governance and Traditional Affairs and entered into the agreement attached as T3 to the combined summons.²
3. Where it appears that there is non-compliance with such agreement, in terms of section 45 of the said Act, the parties are obliged to go back to the facilitator who shall deal with the matter, and deal with the intergovernmental dispute until it has been determined by that facilitator and the relevant Minister that all negotiations have failed.
4. The Plaintiff's conduct in instituting the action in these proceedings without full compliance with the said legislative framework's provisions as alluded to above, is unlawful and unconstitutional and in violation of s 45 of the Act, and as such the Plaintiff is prohibited from instituting such action.
5. Wherefore, the defendant prays for dismissal of the plaintiff's claim with costs, on attorney and client scale.

[7] On 26 March 2026 Transnet delivered an application for summary judgment against BCMM, for payment of the aforementioned sum of R12 565 339,25 together with interest and costs. In Transnet's affidavit supporting summary judgment, deposed to by its regional head, it is contended that:

- (a) the special plea has not raised a triable issue and is not a bona fide valid defence in law in that it is dilatory rather than exculpatory;

² The settlement agreement

- (b) BCMM's reliance on s 45 of the IRFA constitutes a misinterpretation of the applicable statutory framework and the express contractual terms agreed to between the parties;
- (c) BCMM's opposition has been filed solely for the purposes of delaying the action.

[8] It is contended on BCMM's behalf that the plea of non-compliance with the IRFA raises a valid defence and a triable issue. It seems to be BCMM's case that the parties should re-engage with a facilitator, or with the relevant Minister, and that Transnet is barred from pursuing any contractual remedies until something akin to a declarator has been issued stating that the parties have reached a deadlock.

[9] At the hearing of the application, it was further contended that BCMM's approach, in seeking to rely on s 45 of the IRFA as a defence is the antithesis of the purposes of the Act because the parties had exhausted the remedies provided for in the legislation. They had negotiated and engaged, BCMM had acknowledged its indebtedness to Transnet, and they had entered into a further agreement - all in repeated attempts to resolve the matter with the use of intergovernmental mechanisms. Notwithstanding these efforts, BCMM nevertheless defaulted time and time again.

[10] It is contended on Transnet's behalf that the special plea does not seek to invoke s 45 of the IRFA. Rather, it is a technical shield to avoid the consequences of BCMM's own written undertakings. The issue before me, so it is argued, is whether a party which has already engaged in several intergovernmental processes in terms of the IRFA, can insist that the entire process begins afresh before legal enforcement may follow.

[11] The applicable sections of the IRFA read as follows:

1. Interpretation

(1) In this Act, unless the context indicates otherwise -

‘intergovernmental dispute’ means a dispute between different governments or between organs of state from different governments concerning a matter –

(a) arising from –

(i) a statutory power or function assigned to any of the parties; or

(ii) an agreement between the parties regarding the implementation of a statutory power or function; and

(b) which is justiciable in a court of law, and includes any dispute between the parties regarding a related matter;

41 Declaring disputes as formal intergovernmental disputes

(1) An organ of state that is a party to an intergovernmental dispute with another government or organ of state may declare the dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing.

(2) Before declaring a formal intergovernmental dispute the organ of state in question must, in good faith, make every reasonable effort to settle the dispute, including the initiation of direct negotiations with the other party, or negotiations through an intermediary.

42 Consequences of declaring formal intergovernmental disputes

(1) Once a formal intergovernmental dispute has been declared, the parties to the dispute must promptly convene a meeting between themselves, or their representatives-

(a) to determine the nature of the dispute, including-

(i) the precise issues that are in dispute; and

(ii) any material issues which are not in dispute;

(b) to identify any mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist them in settling the dispute, including any

- mechanism or procedure provided for in legislation or any agreement between the parties;
- (c) to agree on an appropriate mechanism or procedure to settle the dispute, subject to subsection (2); and
 - (d) to designate a person to act as facilitator.
- (2) Where a mechanism or procedure is specifically provided for in other legislation or in an agreement between the parties, the parties must make every reasonable effort to settle the dispute in terms of such mechanism or procedure.
- (3) If the parties to a dispute fail to convene a meeting in terms of subsection (1) the Minister may convene the meeting if-
- (a) a national organ of state is involved in the dispute;
 - (b) the dispute is between different provinces and provincial organs of state from different provinces; or
 - (c) the dispute is between organs of state from different governments that do not fall under paragraph (a) or (b) of this subsection or subsection (4).
- (4) If the parties to a dispute in a province fail to convene a meeting in terms of subsection (1) the MEC for local government in the province may convene the meeting if the dispute is-
- (a) between a provincial organ of state and a local government or a municipal organ of state in the province; or
 - (b) between local governments or municipal organs of state from different local governments in the province.
- (5) If the parties fail to attend a meeting convened by the Minister or MEC or to designate a facilitator referred to in subsection (1) (d), the Minister or MEC may designate a facilitator on behalf of the parties.

43 Role of facilitator

- (1) A person designated as a facilitator must-
- (a) assist the parties to settle the dispute in any manner necessary; and
 - (b) submit to the Minister or MEC for local government in the relevant province
 - (i) an initial report concerning-
 - (aa) the nature of the dispute and the precise issues that are in dispute;
 - (bb) the mechanism or procedure to be used to settle the dispute; and

- (cc) any other matters that may be prescribed by regulation in terms of section 47; and
- (2) A report referred to in subsection (1) (b) must be submitted to-
 - (a) the Minister, if the report concerns a dispute referred to in section 42 (3); or
 - (b) the MEC, if the report concerns a dispute referred to in section 42 (4).
- (3) If a dispute referred to in subsection (2) (b) affects the national interest, the Minister may request the facilitator to submit a report to the Minister as well.

44 Assistance by Minister or MEC for local government

- (1) A party to a formal intergovernmental dispute may request assistance in the settlement of the dispute from-
 - (a) the Minister, if it is a dispute referred to in section 42 (3); or
 - (b) the MEC for local government in the relevant province, if it is a dispute referred to in section 42 (4).
- (2) On receipt of a request in terms of subsection (1) the minister or MEC may take any appropriate steps to assist the parties in settling the dispute, including the designation of an official in the public service or other person to act as facilitator between the parties.
- (3) A facilitator designated in terms of subsection (2) acts on the instructions of the Minister or MEC, as the case may be.

45 Judicial proceedings

- (1) No government or organ of state may institute judicial proceedings in order to settle an intergovernmental dispute unless the dispute has been declared a formal intergovernmental dispute in terms of section 41 and all efforts to settle the dispute in terms of this Chapter were unsuccessful.
- (2) All negotiations in terms of section 41, discussions in terms of section 42 and reports in terms of section 43 are privileged and may not be used in any judicial proceedings as evidence by or against any of the parties to an intergovernmental dispute.

[12] These sections must be read in conjunction with the relevant portions of section 41 of the Constitution which provide as follows:

41. Principles of co-operative government and inter-governmental relations. –

(1) All spheres of government and all organs of state within each sphere must -

(h) co-operate with one another in mutual trust and good faith by-

- (i) fostering friendly relations;
- (ii) assisting and supporting one another;
- (v) adhering to agreed procedures; and
- (vi) avoiding legal proceedings against one another. . . .

. . . .

(3) An organ of state involved in an inter-governmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court *to resolve the dispute* (emphasis added).

(4) If a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs or state involved.

[13] It is of particular importance to note that it is not disputed that both the acknowledgment of debt and the settlement agreement are products of intergovernmental negotiations between the parties. Indeed, it is BCMM's case, as set forth in its special plea that:

- (a) both parties attended intergovernmental relations facilitation;
- (b) the national minister of Cooperative Governance and Traditional Affairs ("COGTA") was the facilitator;
- (c) the settlement agreement was a product of such facilitation.

[14] In the circumstances I have some difficulty in understanding what it is that BCMM expects Transnet to do with respect to the forward conduct of this matter. BCMM seems to place some reliance on the SCA judgment in *Eskom*

*Holdings SOC v Resilient Properties and Others*³ in support of its contention that Transnet has not made every reasonable effort to settle what it refers to as “the dispute”, to resolve it by whatever mechanism or procedure available outside court and to avoid judicial proceedings before a genuine attempt has been made to settle “the dispute”. It is contended that on this basis it is questionable whether the action is ripe for adjudication. It is also argued that there is another defence, which stands independently. This defence is whether the IRFA applies to this matter at all. In rather cursory heads of argument, senior counsel has contended, what appears to be somewhat tongue in cheek, that this too is a triable issue which, if resolved in BCMM’s favour, would have Transnet non-suited.

[15] I am not sure what to make of these submissions. There seems to me to be no reason why this court, as presently constituted should firstly, not be in a position to decide whether the IRFA applies, and secondly, if it does, to what extent it has been complied with. Differently put, the ambit and nature of the resistance to summary judgment in my view, is nothing other than a duplication of the special plea, and can, in these circumstances, be decided on the papers.

[16] To my mind BCMM’s reliance on *Eskom Holdings* is misplaced. In that matter Petse DP considered three matters, two of which featured Eskom as the appellant. In these two matters, the primary concern raised was whether Eskom’s conduct, in interrupting the bulk supply of electricity to two municipalities (to coerce these municipalities to pay their debts to Eskom) was defensible on both constitutional and statutory grounds. Eskom had provided electricity to municipalities which in turn sold the electricity to other customers or end-users. The municipalities failed to pay Eskom. When litigation

³ 2021 (3) SA 47 SCA

commenced, the two municipalities owed Eskom over R1,2 billion and half a billion rand respectively. Eskom commenced interrupting the supply of electricity, extending the interruptions incrementally, until the point of total terminations unless the municipalities made substantial payments to reduce their indebtedness to Eskom. It was not in dispute that the municipalities had repeatedly failed to honour their payment arrangements with Eskom. In justifying its stance Eskom stated that the respondents (who were end-users of electricity in the scenario) were not without a remedy in that it was open to them to seek a mandamus against the municipalities directing them to pay their debts which would obviate the need for Eskom to implement the decision to interrupt the electricity supply. In dealing with this aspect, Petse JA noted that it was cold comfort to suggest that end users of electricity could seek a mandamus directing delinquent municipalities to pay their debts in circumstances where it was known that they were unable to do so.⁴ Over and above this, the end users were not in default. They had paid their debts to the municipalities. The end users also contended but that Eskom had not exhausted the mechanism provided for in s 41 of the Constitution and s 40 of the IRFA to resolve its disputes with the municipalities before taking these radical interruption decisions.⁵ One of the defences which Eskom raised was that s 41 of the Constitution and sections 40 and 41 of the IRFA were not applicable because there was no ‘dispute’ between Eskom and the two municipalities.⁶ To this end, Eskom contended that the municipalities had unequivocally admitted liability, had undertaken to settle their debits over an agreed period, and had undertaken to pay for their current consumption of electricity when billed, but had failed to honour these undertakings. In the court of first instance, Hughes J said the following:

⁴ *Eskom Holdings* para 19

⁵ *Eskom Holdings* para 22

⁶ *Eskom Holdings* para 23

‘It is apparent that there is a dispute with regard to payments due to Eskom by the two municipalities concerned. It is common cause that both parties have constitutional duties and obligations towards the public at large. Both parties in my view, have failed the public at large; on the one hand we have the delinquent municipalities and on the [other] hand we have Eskom having not been paid by the municipalities opting to deprive the public of basic services in terms of the Constitution and the Bill of Rights. In conclusion it is evident to me that Eskom and the municipalities failed to adopt the dispute mechanism at their disposal in terms of IRFA I agree with the amici that in this instance, the failure to pursue the process and mechanism, as is found in IFRA (sic), would constitute a ground for review.’⁷

[17] On appeal, it was contended on behalf of one of the end users that because of the egregious nature of the rights likely to be violated by the termination of electricity to a municipality, s 21(5)⁸ should be interpreted so as to require prior judicial authorisation of any decision by Eskom to interrupt or terminate the supply of electricity to a municipality.⁹ This submission did not receive the approval of the appeal court. Petse JA did however, find that when it comes to municipalities and the distributors of electricity, further considerations would come into play. At paras 58 to 61 of *Eskom Holdings*, the Court said the following:

‘Terminating the supply of electricity to an entire municipality in circumstances provided for in s 21(5) would be a radical step. Such reduction or termination of the supply of electricity would adversely affect every consumer within the affected municipality. Indeed, it would have the effect of collapsing the entire municipality, rendering it unable to fulfil its constitutional and statutory mandate to provide basic services. . . . And a municipality whose electricity supply is terminated by Eskom would not be able to “give members of the local community equitable access to the

⁷ *Eskom Holdings* para 29

⁸ (of the Electricity Regulation Act 4 of 2006, referred to in *Eskom Holdings* as the ERA)

⁹ *Eskom Holdings* para 53

municipal services to which they are entitled” as required by s 4(2)(f) of the Municipal Systems Act. Nor would such a municipality be able to provide services in respect of water, sanitation and electricity in terms of s 9(1)(a)(ii) of the Housing Act as these services rely on electricity for their functionality. . . . The Municipal Structures Act also seeks to ensure sustainable, effective and efficient municipal services, and to promote social and economic development in a safe and healthy environment. Without the supply of electricity to a municipality, all these developmental and transformative goals would be nothing more than a dream deferred with deleterious effects to local communities.’

[18] In finding that Eskom was required to comply with the IRFA before taking the decision to interrupt electricity supplies, Petse JA placed due and proper emphasis, in my view, on the fact that the IRFA is that very legislative measure which is contemplated in s 41(2) of the Constitution, describing the position as follows:

‘[63] In its preamble,¹⁰ the broad object of s 41 is taken further by stating, amongst other things, that “all spheres of government must provide effective, efficient, transparent, accountable and coherent government for the Republic to *secure the well-being of the people and the progressive realisation of their constitutional rights*” (emphasis added). It goes on to state that the pervasive need for government to redress the legacies of apartheid and discrimination are “best addressed through a concerted effort by government in all spheres to work together and to integrate as far as possible their actions in the provision of services, the alleviation of poverty and the development of our people and our country.” In particular s 4 of the IRFA states that its object is:

“[T]o provide within the principle of co-operative government ... a framework for the national government, provincial governments and local governments, and all organs of state ... to facilitate coordination in the implementation of policy and legislation including –

¹⁰ (that is the preamble to the Constitution)

...(b) effective provision of services;
...(d) realisation of national priorities.”

[65] Section 40 of the IRFA, which is headed “Duty to avoid intergovernmental disputes” provides:

“All organs of State must make every reasonable effort –

- (a) to avoid intergovernmental disputes when *exercising their statutory powers or performing their statutory functions* (emphasis added); and
- (b) to settle intergovernmental disputes without resorting to judicial proceedings.

Any formal agreement between two or more organs of state in different governments regulating the exercise of statutory powers or performance of statutory functions, including any implementation of protocol or agency agreement, must include dispute-settlement mechanisms or procedures that are appropriate to the *nature of the agreement and the matters that are likely to become the subject of a dispute* (my emphasis).”

. . . .

[74]The real disputes concerned the manner in which these two municipalities could be enabled or empowered to pay their debts to Eskom and thus whether it was appropriate in the circumstances to interrupt the supply of electricity to exact payment from them. . . .

[76] Moreover, in signing the acknowledgments of debts the municipalities did not thereby consent to the interruption of electricity. . . .

[78] I elaborate on why I earlier held that Eskom was required to comply with s 41(3) of the IRFA before embarking on the course it had chosen in order to extract payment from the ELM and the TCLM.¹¹ Municipalities bear certain obligations to provide their communities with basic services, including electricity. The source of these obligations is the Constitution itself, buttressed by a number of statutory provisions. If any one of these obligations is breached by the municipality, the Constitution provides the necessary remedies to resolve the breach.

¹¹ (the two municipalities involved)

[79] As an organ of state, Eskom bears certain constitutional duties. The relationship between Eskom on the one hand and the ELM and the TCLM on the other is more than merely a contractual one regulated purely in terms of the ESAs that the parties concluded. Eskom supplies bulk electricity to the municipalities which, in turn, have a concomitant duty to supply it to the end-users. *The unique feature of this relationship is that Eskom, as an organ of state, supplies electricity to local spheres of government to secure the economic and social well-being of the people. This then brings the relationship within the purview of IRFA* (my italics). . . .

[81] In paragraph 77 above, mention is made that Eskom itself realised that the parlous state in which the ELM and the TCLM are warranted intervention by the provincial government and, if need be, the national government. But this avenue was not explored because Eskom was not prepared for the process to unfold. . . .

[88] There is one crucial fact that is uncontentious in relation to Eskom's appeals. It is that Eskom's decision to interrupt bulk electricity supply to the ELM and the TCLM was used as leverage to extract payment.'

[19] There are a number of obvious reasons why *Eskom Holdings* is distinguishable from the matter at hand. The list is not exhaustive:

- a. The relationship between Transnet and BCMM is of a purely contractual nature, in the nature of a lease agreement.
- b. There is nothing radical about the action which Transnet has instituted. It is in terms of an acknowledgment of debt reiterated in its settlement agreement with BCMM, both of which have been products of negotiation in order to avoid litigation.
- c. Consumers are not affected by the lease agreement/contract, the acknowledgment of debt based on the lease agreement, and the settlement agreement based on the acknowledgment of debt between the parties and/or BCMM's failure to comply with the

agreement, its acknowledgment of debt and ultimately, the settlement agreement.

- d. The lease agreement, the acknowledgment of debt and the settlement agreement are not products of the exercise of statutory powers or in the performance of statutory obligations, including powers and obligations of organs of government regulated by the Constitution in order to provide effective, efficient, transparent, accountable and coherent government for the Republic to secure the well-being of the people and the progressive realisation of their constitutional rights, as set forth in the IRFA's preamble, which preamble pertinently traverses the mischief which this legislation seeks to address.
- e. It also has nothing to do with the government needing to redress poverty, underdevelopment and marginalisation of people and communities as referred to in IRFA's preamble.
- f. In particular, it has nothing to do with provision of basic services to the people, as also referred to in IRFA's preamble.
- g. It is necessary to emphasise that this matter is not one where Transnet has made certain stifling and unrealistic decisions which have rendered BCMM unable to fulfil its constitutional obligations to its citizenry, resulting in environmental and socio-economic catastrophe.¹²

[20] Counsel for BCMM has also referred me to *RAF v Taylor and related matters*¹³ read together with the Constitutional Court judgment of Madlanga J in

¹² See for example *Eskom Holdings v Lekwa Ratepayers Association* 2022 (4) SA 78 SCA at paras 29 – 31, supporting the dictum of *Eskom Holdings v Resilient Properties*. As an obiter point in the matter at hand, Unterhalter AJ commanding the minority decision in *Eskom Holdings Soc Ltd v Vaal River Development Association* 2023 (4) SA 325 CC held that IRFA did not apply to the dispute between Eskom and the municipalities, and that the SCA in *Resilient Properties* and *Vaal River Development* had fallen into error on this score, taking into consideration the facts of those matters.

¹³ 2023 (5) SA 137 SCA

*Eke v Parsons*¹⁴ as purported authority for the contention that the settlement agreement constituted a compromise of an earlier dispute between the parties because the parties had agreed to new terms in substitution of their existing rights and obligations. In *Taylor*, so it is contended, the SCA reiterated the principles outlined in *Eke* and confirmed that a compromise extinguishes disputed rights and obligations, puts an end to litigation, and has the effect of *res iudicata*. That being the case, it is argued, the fact that BCMM has also defaulted in terms of the settlement agreement which is effectively a compromise, gives rise to new contractual rights and obligations which exist independently of the original cause of action. Once a compromise has been reached, says the defendant, the parties are precluded from proceeding on the original cause of action. It is stated in BCMM's heads of argument, that with this legal exposition in mind, it follows that the breach of the settlement agreement is a new dispute and a new cause of action between two organs of state which is governed by the IRFA in its own right. The argument seems to be, that in spite of the fact that BCMM has defaulted with respect to the same debt over and over again, because there is a settlement agreement hovering in the background providing for payment of the debt in 12 bite-size chunks as opposed to a demand for payment of the entire amount, which would normally be the case, the parties must return to the drawing board and negotiate further, ostensibly under the auspices of the IRFA. It has further been suggested that the issue of whether the IRFA applies to this "dispute" at all is a triable issue which, if resolved in BMCC's failure would have Transnet non-suited.

[21] Not only is there no logic in this argument, but it seems, in my view, to be taking undue advantage of the IRFA behind a makeshift shield of a misplaced allegiance to legislation that was clearly not designed to cater for this type of

¹⁴ 2016 (3) SA 37 CC

situation. As stated by Transnet’s counsel, BCMM seeks to invoke the IRFA, not as an instrument of cooperative government, but as a technical shield to avoid the consequences of its own written undertakings.

[22] I have been at pains to illustrate, with reference to the *Eskom* cases (which have their own internal dynamics not relevant to this matter), that the main purpose of the IRFA is to secure the wellbeing of the people and the progressive realisation of their constitutional rights. That is the principle. As set forth in its preamble, it is there to establish a framework for addressing the need for government to redress poverty, underdevelopment and the marginalisation of the people and communities. The IRFA exists to facilitate the resolution of inter-governmental disputes in the most cost-effective manner, with the lowest possible impact on the public purse. Its purpose is clearly not, as pointed out by Transnet’s counsel, to provide a perpetual procedural refuge to an organ of state that has already resolved the dispute, acknowledged liability and thereafter has persisted in failing to honour the agreement reached.

[23] The assertion that an applicant should be non-suited for non-compliance or voluntary partial compliance with the provisions of s 40 of the IRFA has been raised before in this Division. In *Enoch Mgijima Municipality v Minister of Finance and Others*¹⁵ Brooks J referred to defences raised (quite similar to the ones at hand I might add), as “technical points”, and correctly so in my view. In dealing with the history of that matter, where dispute resolution mechanisms had already been invoked under the IRFA, albeit without success, Brooks J said the following:

¹⁵ (4351/2022) [2022] ZAECKMHC 125 (30 December 2022)

[21] On these facts, in my view, there is no room to argue successfully that the applicant was expected to invoke the provisions of section 41 of the Intergovernmental Relations Framework Act 13 of 2005 once again before approaching the court. The following statement again drawn from *Oliver Reginald Tambo District Municipality v Independent Electoral Commission and Others* supra at para [16] is apposite to the circumstances of this matter:

“In such circumstances it is difficult to imagine what else the applicant could have done

in an attempt to settle the dispute that had arisen. There was also no obligation on the part of the 1st respondent as an Organ of State to make every reasonable effort to resolve

the dispute; what was required was a response to the applicant’s letter followed by a genuine attempt to resolve the dispute.”¹⁶

. . . .

[22] Consequently, in my view there is no merit in any of the technical points adopted for argument on behalf of the respondents. It is to be noted that no argument was advanced by counsel appearing on behalf of the respondents against that placed before the court on behalf of the applicant to address the requirements of an interlocutory interdict and the sufficiency of the applicant’s case in this regard. Such an approach adopted by or on behalf of the participating respondents appears to be a deliberate step away from the spirit and provisions of the Intergovernmental Relations Framework Act 13 of 2005. Such a step is regrettable particularly where the resultant arguments adopted are devoid of merit and invite the undesirable prospect of an adverse costs order being made against the respondents.’

[24] In the matter before me. there is no dispute between the parties, apart from a technical defence as to whether the steps taken by the parties constitute due compliance if the IRFA is applied. I am not persuaded, notwithstanding the steps which have already been taken by the parties to avoid litigation, that the IRFA even finds application in this particular matter at all. This I have been at

¹⁶ 1995/2021, 2021 ZAECHMC 31, 24 August 2021

pains to illustrate with reference to the *Eskom* cases (which have their own internal dynamics), all of which have, to a greater or lesser extent, impacted directly on the people and their constitutional rights to such an extent that the people (and not other governmental institutions) resorted to litigation against Eskom. On the other hand the matter before me arises from a purely contractual relationship. There is nothing before me to suggest that this lease agreement has had an impact on the people and their constitutional rights. Considered in terms of the definition of an intergovernmental dispute in section 1 of the IRFA, it does not pass muster as an intergovernmental dispute. The definition which I quoted earlier, states that an intergovernmental dispute is one concerning a matter arising from a statutory power or function assigned to any of the parties or an agreement between parties regarding the implementation of a statutory power or function. That is the starting point. If there is no dispute between the parties on this score (as in the matter before me), BCMM cannot be seen to argue in the alternative, so it would seem, that there may be a dispute about whether there is a dispute, which is a triable one.

[25] There is no harm in the fact that the parties participated in an out of court facilitation process which culminated in a settlement agreement. This happens regularly and is generally encouraged immaterial of whether the parties are government institutions or not. The fact is that BCMM has been in default of complying with the settlement agreement for over a year. This is not in dispute. There is no “intergovernmental relations dispute” which needs to be referred back to a facilitator as alluded to in the special plea. Nor has BCMM pleaded any other defence – not in its special plea and not when pleading over.

[26] There is nothing before me to elevate this matter to one which cannot be disposed of in terms of Rule 32 of the Uniform Rules of this court. Transnet has founded its claim upon admitted written agreements addressing BCMM’s

indebtedness to it. The amount of the debt has been liquidated and BCMM is in clear breach of its obligations to pay, and has been for over a year. Transnet's claim is clear, certain and enforceable by way of a claim for summary judgment. There is no triable issue between the parties to justify a denial of the relief which Transnet seeks. On the particular facts of this matter, BCMM is a recalcitrant debtor whose technical defences have no prospect of success, and which have been raised solely for the purpose of delay.¹⁷ Simply stated, BCMM has failed to discharge the onus (which has shifted to it), of showing the existence of a genuine triable issue.¹⁸

[27] Unfortunately, as in the matter of *Enoch Mgijima Municipality* (which happened to have been the successful party in that matter), the unsuccessful party before me has, and regrettably so, adopted a step which to my mind constitutes an unnecessary abuse of the true spirit and purpose of the IFRA, and I see no reason why costs should not follow the result. The settlement agreement is silent on issues such as interest, the nature of any proposed costs order and the scale thereof. In the premises, the order below can only incorporate the usual *mora* interest.

ORDER:

- 1. Judgment is granted against the defendant (Buffalo City Metropolitan Municipality) for payment in the sum of R12 565 339,25.**
- 2. The defendant shall pay interest on the aforesaid amount a tempore morae calculated from 1 August 2025 (in terms of the settlement agreement), until the date of final payment.**

¹⁷ See *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA)

¹⁸ See *Standard Bank of South Africa Ltd v Franzsen* (4523/23 [2026] ZAWCHC 132 (19 March 2026)

3. The defendant shall pay the plaintiff's costs of suit with counsel's costs to be determined on scale B.

**I.T. STRETCH
JUDGE OF THE HIGH COURT**

Counsel for the plaintiff/applicant: M. Somandi

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Date heard: 23 June 2026

Date handed down: 1 September 2026