



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

Case No.: 3196/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>16 SEPTEMBER 2026</u>	SIGNATURE
DATE	

In the matter between:

NGOBENI BONGANI DOMINGO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

LINK NO: 4873138

JUDGMENT

FOURIE AJ:

INTRODUCTION:

- [1] When the matter came before this Court, the Court was confronted with the perplexing notion that the Plaintiff and the Defendant were not *ad idem* on whether or not the matter is proceeding on both merits and quantum, alternatively whether merits have been settled for the matter only to proceed on the quantification of the Plaintiff's claim.
- [2] Where this Court would have appreciated for judicial resources to be expended sensibly, the Court was necessitated to hear and indeed make a determination on which portions of the dispute between the Plaintiff and the Defendant remain alive.
- [3] This Court is tasked, accordingly, to determine whether the Plaintiff's claim specifically in respect of merits has been settled, and as such is to be excluded from a further trial, alternatively whether, at the recommencement of the trial, ultimately the Plaintiff's claim remains to be proven in respect of both merits and quantum.

RELEVANT BACKGROUND:

- [4] It seems largely uncontested that the Plaintiff was involved, as a passenger, in a motor vehicle collision that occurred on 15 December 2016.
- [5] It is further largely uncontested that the Plaintiff lodged his claim with the Defendant by the filing of his RAF1 on 14 October 2019. It is necessary

to state that the Plaintiff's RAF1 form and the claimant affidavit annexed thereto have two crucial aspects that deserve to be highlighted, namely:

[6.1] The Plaintiff's affidavit references the date of accident as 15 December 2018 and not 15 December 2016; and

[6.2] Both the Plaintiff's affidavit and the RAF1 form indicate that the drivers of the vehicles that, according to the Plaintiff, caused the accident were unidentified and unknown.

[6] The Court deals later with the incorrect date as provided in the Plaintiff's affidavit, but at this junction it is necessary to highlight that the manner in which the Plaintiff proceeded with their claim attracted the application of Section 17(1)(b) of the Road Accident Fund Act, 56 of 1996 read with Regulation 2 of the RAF Regulations.

[7] Principled solely on the aforesaid provisions and if the incorrect information as provided by the Plaintiff is disregarded, and regard is had to the true and correct dates, a proper evaluation of the facts might lead to a finding that the Plaintiff's claim was lodged outside the statutory timeframe provided for the lodging of a Plaintiff's claim.

[8] More on this issue shall follow later in this Judgment.

[9] After lodging the Plaintiff's claim with the Defendant and approximately on 1 December 2020, the Plaintiff proceeded to serve a Summons incorporating Particulars of Claim on the Defendant.

[10] On 17 January 2020, prior to the issuing of the Summons by the Plaintiff and seemingly premised solely on the Plaintiff's claim lodged and the

information found thereon, the Plaintiff received a “without prejudice” offer of settlement of the merits of the Plaintiff’s claim.

[11] The crucial elements of the offer of settlement are at least the following:

[11.1] The offer is limited to the negligence aspect relating to how the collision occurred. The offer may not be interpreted or construed in a manner that would have the RAF concede any other aspect of the claim. To avoid doubt, the RAF reserves all its rights in law with regard to all other procedural and substantive aspects of the claim.

[11.2] Acceptance of the offer will be effective only when the RAF receives this offer (the settlement offer) with the “acceptance of offer” portion fully completed.

[11.3] If the offer was made after the claim became prescribed, it will not be deemed a waiver of prescription, and any purported acceptance will not be enforceable.

[11.4] The offer remains open for acceptance for a period of 20 (twenty) days from the date of the letter, or until the date preceding the date of prescription of the claim, whichever is the sooner. The RAF may, at its sole discretion, consent to the acceptance of the offer after expiry of the 20 (twenty) day period, but any consent of acceptance after the claim has prescribed will not be deemed to be a waiver of prescription, and the purported acceptance will not be enforceable.

[12] The Plaintiff did not accept the Defendant’s offer of settlement within the allowed 20 (twenty) day period as per the offer of settlement.

- [13] The Plaintiff attempted to accept the settlement by filing a document titled “notice of acceptance of offer of settlement – merits” which was dated 27 July 2022, more than two years after the original offer was sent.
- [14] It is common cause that the acceptance of the offer on 27 July 2022 was not accompanied by the consent of the Respondent to accept the offer outside the 20 (twenty) day period stated in the offer of settlement.
- [15] A further nearly three years later, the parties filed a document titled "meaningful pretrial questions and answers" dated 18 March 2025 in which, as background, the parties recorded that the issue of merits has been settled between the parties in the region of 100% in favour of the Plaintiff.
- [16] The pre-trial minute made no reference to any concessions made by the respective parties or the terms of settlement. The only evidence before this Court was that, when the pre-trial conference between the parties was held, some five years after the initial settlement offer was made, the parties acted under the mistaken belief that the matter had been compliantly and validly settled.
- [17] The evidence presented does not indicate that the pre-trial minute constitutes a settlement of the merits; it appears to state what the parties believed to be the factual position at the time. The two concepts are distinctly different.
- [18] As the trial date for the matter was fast approaching and less than a month before the ultimate set down of the matter on 25 August 2026, the Plaintiff proceeded to file a supplementary affidavit seemingly to address the discrepancies in the initial 19F affidavit filed as well as to, at that stage, and six years after the lodgement of the initial RAF1 form, to indicate the

matter as one not dealing with unknown drivers but stating and identifying the identities of the respective drivers.

[19] By amending the Plaintiff's claim at that stage, a significant consequence was attracted in that, if the Court ultimately accepts the version of the Plaintiff as amended, the Plaintiff's claim would attract a statutory timeframe to lodge his claim of three years rather than two years as was previously the case in respect of unidentified and unknown drivers.

[20] This Court is not tasked with evaluating whether the Plaintiff's claim has ultimately prescribed nor whether a valid claim, compliant with the statutory provisions, has been lodged. No doubt the trial Court that ultimately deals with this matter shall need to grapple with these issues as they will in future pose a conundrum to be overcome by the respective parties.

[21] This Court shall deal with whether the matter can be regarded as settled in respect of merits. In evaluating the position, the Court must make a practical assessment to reach a just conclusion.

[22] To do so, the Court evaluates three crucial questions to be answered, namely:

[22.1] Did the Plaintiff accept the settlement offer made by the Defendant?

[22.2] Could the Defendant have ratified the settlement at any later stage by way of the pre-trial minute or any other actions; and

[22.3] Was the initial settlement offer competent?

**WAS THE SETTLEMENT OFFER MADE BY THE DEFENDANT
ACCEPTED BY THE PLAINTIFF:**

[23] It is common cause that the initial offer made was not accepted within the provided 20 (twenty) day period, and as such the offer was not open for acceptance at any later stage unless expressly so authorised by the Defendant.

[24] It is common cause that the Defendant did not expressly extend the settlement offer to remain open for acceptance at a later stage.

[25] As such, and insofar as the Defendant relies on the acceptance of the offer on 27 July 2022, such reliance cannot be sustained.

**COULD THE DEFENDANT HAVE RATIFIED THE SETTLEMENT AT
ANY LATER STAGE BY WAY OF THE PRE-TRIAL MINUTE OR ANY
OTHER ACTIONS:**

[26] Counsel appearing on behalf of the Plaintiff indicated during argument that the Court is erroneously disregarding the pre-trial minute between the respective parties. The Court indicated to the Plaintiff that it is expressly so regarding the pre-trial minute, but that it needs to evaluate its content and context. Given the timeframes as already set out and the manner in which the claim was dealt with, the Court has no difficulty in accepting that both the Plaintiff and the Defendant, in the compiling of the pre-trial minute, were, rather, in error, stating an incorrect factual summary of historic events rather than unequivocally and on instructions of their clients engaging into the settlement of the Plaintiff's claim. This Court accepts that true concessions made by parties in pretrial engagement

resolve issues finally between the respective parties. In the current matter, however, no evidence was led to show that this is indeed what transpired between the parties. If the Plaintiff seriously believed that there were settlement negotiations that led to the concession in the pre-trial minute, as the Plaintiff is now alleging, then it was for the Plaintiff to adduce some sort of evidence to confirm this notion.

WAS THE INITIAL SETTLEMENT OFFER COMPETENT:

- [27] At the commencement of the trial, the Plaintiff's claim had been significantly altered. At the current stage of litigation, the Court cannot evaluate the parties' historic actions on the pleadings as they currently stand. To determine whether the parties' historic actions ultimately indicate that the matter has been settled, the Court must evaluate the papers and facts that were present when those alleged actions occurred.
- [28] The initial offer of settlement was made under circumstances where the Plaintiff represented to the Defendant that the accident occurred two years later than it actually had. The Plaintiff's own actions accordingly circumvented possible red flags in respect of prescription to be waived at that junction.
- [29] At all stages at which the Plaintiff alleges the matter was settled, the facts that presented themselves to the respective parties and the Court indicated that such settlement could not be made as the Plaintiff's claim, described in the manner the Plaintiff had at that stage, had become prescribed.
- [30] It might be that the Court ultimately dealing with the matter finds that the later submissions made by the Plaintiff lead the matter to be evaluated

under a different lens, but the facts that presented themselves at all material times stand opposite to what the Plaintiff seeks to achieve.

[31] The notion the Plaintiff wishes the Court to accept is that as Plaintiff would be allowed to have the merits of their claim settled premised on a certain proposition and facts only for the same Plaintiff to, after receiving an offer of settlement, completely change the narrative and the position under which a claim was to be settled and then still hold the Defendant to such a settlement. This is an unacceptable notion.

[32] Whilst small mistakes may be cured *ex post facto*, the changes the Plaintiff ultimately makes to his claim are material. It identifies possible parties involved in the proceedings, which the Defendant could use to assess its ultimate liability. To summarise, the changes materially affect the statutory framework within which the Plaintiff's claim is dealt with, and no doubt the manner in which the Defendant ultimately deals with the matter either at trial or alternatively by way of settlement.

[33] The facts present at the time indicated that the Plaintiff's claim had become prescribed and as such no valid offer could have been received from the Defendant nor ratified by the Defendant at any stage. Even if the notion could be accepted that the Defendant could indeed make such a valid offer, which I reiterate it cannot, then holding the Defendant to a settlement agreement, if regard is had to the Plaintiff's actions, would not be justice done between the parties.

WHAT WAS PERPORTEDELY SETTLED:

[34] The terminology used by the parties is significant.

- [35] The offer of settlement seems to deal specifically with negligence, and it still gives the Defendant the right to challenge alternative aspects of the merits, such as prescription. Even the notice of acceptance on merits, although invalid, indicates the settlement deals only with how the accident allegedly occurred and with negligence, rather than a total settlement of the merits.
- [36] The fact that the right to raise prescription, amongst others, remains intact was dealt with by the Court in the matter of *Nondabula v Road Accident Fund*¹ and this Court aligns itself with the views in this regard as expressed by Alkema J in relation thereto.
- [37] In *Nondabula supra*, the Court was, however, tasked with evaluating whether the Plaintiff's claim had prescribed, an issue I am not currently dealing with; but for the purpose of evaluating the current question, the principles are relevant to state herein.

EVALUATION:

- [38] The Court desists from entering into a further evaluation in respect of whether the Plaintiff's claim has ultimately prescribed or not. To do so would be to intervene in the evaluation that the Trial Court will ultimately make.
- [39] The ultimate evaluation on which portion of Section 17 or 23 of the Act finds application, whether there has been statutory compliance or not, and whether or not the Plaintiff's claim has ultimately prescribed remains open to the Trial Court to deal with.

¹ *Nondabula v Road Accident Fund* (2845/13) [2016] ZAECHMHC 45 (26 September 2016)

- [40] At the current juncture, the Court evaluates whether the merits have, in totality, been settled. The Court concludes that it has not.
- [41] The proposal in respect of the settlement of negligence, forming but part of the ultimate finalisation of the Plaintiff's claim on merits, was not concluded within the confines of the settlement offer made by the Defendant.
- [42] Having not concluded the settlement within the confines of the offer of settlement tabled by the Defendant, the Court evaluated whether alternative facts exist indicating that the purported settlement of the matter may nonetheless be regarded as valid and enforceable. Regard being had to the actions of the Plaintiff, the premise on which the Plaintiff's claim was founded and the facts available to the respective parties at the time, the Court cannot accept that the merits of the matter have become settled in totality.
- [43] To give recognition to any effects flowing from the erroneous actions of the Plaintiff in presenting one case to the Defendant only to, after receiving an offer of settlement, amend their claim to a completely different claim and still rely on the initial offer of settlement can simply not be accepted as justice being done between the respective parties. The dictum of *ex turpi non causa* rings true in circumstances where the Court cannot give recognition to the manner in which the Plaintiff wishes to enforce any sort of concession, knowing full well that he ought not to be entitled to do so. To give any recognition to the actions of the Plaintiff cannot be justified.

- [44] The parties filed amended Heads of Argument specifically dealing with the issues at hand. The Plaintiff specifically referred me to the matters of *Ontoro v Road Accident Fund*² and *MM v Road Accident Fund*³.
- [45] In *Ontoro*, however, the Plaintiff indicated on the RAF1 form that the accident was expressly not highlighted as a hit-and-run accident, contrary to the current matter where the Plaintiff expressly made known that the identities of the respective drivers were unknown, and contrary to the current matter, where the Defendant could not have expected to object to the Plaintiff's claim under circumstances where the Plaintiff indicated an incorrect date of accident on its affidavit to support its claim. If the Plaintiff conveyed the correct day on which the accident occurred, the Plaintiff could have relied on *Ontoro* as authority asking the Defendant to object to the Plaintiff's claim. When it is the Plaintiff who in essence misled the Defendant on the true date of the accident, the Plaintiff cannot rely on the Defendant who needed to object to the validity of the Plaintiff's claim.
- [46] Insofar as it relates to *MM*, *supra*, the matter is distinguishable from the current matter in that, in *MM*, the Defendant wished to withdraw from a compromise reached between the parties. In *MM*, the parties reached a valid compromise, and the Court evaluated whether the RAF ought to be allowed to step away from it.
- [47] In the current matter, however, no settlement came into existence, and as such there was no necessity for the Defendant to withdraw from such compromise. The Defendant tabled a compromise to the Plaintiff which was not validly accepted. Absent a valid acceptance, there is no need to

² *Ontoro v Road Accident Fund* (6810/2020) [2026] ZALMPPHC 65 (28 May 2026)

³ *MM v Road Accident Fund* (25/11/2019) [2019] ZAMPMBHC 11 (4 December 2019)

evaluate the entitlement of the Defendant further to withdraw from such compromise.

- [48] Having found as aforesaid, it is not necessary to evaluate any other principles applicable to the matter. The merits of the Plaintiff's claim have not been conceded to a degree that the Court can accept that those issues are no longer alive between the Plaintiff and the Defendant and are accordingly to be regarded as *res judicata*. The issues between the Plaintiff and the Defendant pertaining to merits remain very much alive and are to be dealt with by a Trial Court.

COSTS:

- [49] The finding of this Court at this juncture does not mean ultimate success for either the Plaintiff or the Defendant, it merely highlights the juncture in the litigious process where the litigants currently find themselves. As such, the Court is satisfied that the costs in relation to the current proceedings can stand over to be dealt with during the main action when the Court ultimately hears same.

ORDER:

- [50] For the aforesaid reasons, the following Order is made:

[50.1] The Defendant has not conceded the merits of the Plaintiff's claim.

[50.2] The trial shall proceed on both quantum and merits, both of which the Plaintiff must prove.

[50.3] The parties shall set the matter down within 20 (twenty) days of this Order on the judicial case management roll to case manage the matter.

[50.4] Costs of the matter as set down from the trial week of 7 September 2026 shall stand over for adjudication in the main action.



HF FOURIE
ACTING JUDGE OF THE HIGH COURT,
MPUMALANGA DIVISION

Counsel for the Plaintiff: ADV M PIENAAR

Instructed by: MAHLALELA ATTORNEYS

Counsel for the Defendant: ADV TSHITAMBA

Instructed by: OFFICE OF THE STATE ATTORNEY

Date of hearing: 10 September 2026

Date of judgment: 16 September 2026