REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: ***NO***
(2)	OF INTEREST TO OTHER JUDGES: ***NO***
(3)	REVISED: **NO**
Date:	**23 January *2025*** Signature: _____

CASE NO: 2020/37977

In the matter between:

ALANA MARJORY JOYCE **APPLICANT**

and

MONOLINE INVESTMENTS 8 TRUST **RESPONDENT**

Coram: Dlamini J

Date of request for reasons: 31 July 2024

Delivered: 23 January 2025 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, uploaded to *CaseLines*, and released to SAFLII. The date and time for the hand-down is deemed to be 10:30 on 23 January 2025.

JUDGMENT

DLAMINI J

INTRODUCTION.

[1] On 10 June 2024, I made an order marked “X” an order of this court. My reasons for that order follow hereunder.

[2] This is an application in which the applicant seeks relief that a settlement agreement concluded by the parties on 3 March 2020, be made an order of this court.

BACKGROUND FACTS.

[3] The facts surrounding this dispute are largely common cause and can be summarised as follows;-

[4] The applicant is a pensioner who currently resides in the United Kingdom. The applicant previously lived in South Africa, and on 19 October 2014, she concluded a written agreement of sale with the respondent, wherein she bought Unit 1[…] in the G[…] P[…] Retirement Village for R1 450,000.00. (“the Unit”).

[5] The respondent is the registered owner of Portion 628 of the Farm Wilgespruit No. 190 IQ, known as Honeydew Manor Extension 12 Township, and the developer of G[…] P[…] Retirement Village – a retirement village, as contemplated in the Housing Development Schemes for Retired Persons Act (65 of 1988) (“the Housing Act”) on the said property.

[6] The salient terms of the life rights agreement were the following: -

6.1. The respondent granted the applicant the exclusive right of lifelong occupation of the Unit.

6.2. In return thereof, the applicant lent and advanced the respondent an amount of R1 450 000,00.

6.3. The applicant would be entitled to terminate the life rights agreement at any time, by written notice to the respondent, on receipt of which the respondent would be entitled to market the Unit and alienate the Unit to a new occupant.

6.4. After a new agreement had been concluded between the respondent and the new occupant regarding the Unit, and the new occupant had made payment in terms thereof, the respondent would pay the applicant an amount equal to the loan amount less the agreed commission and any outstanding costs.

[7] In January 2019, the applicant terminated the life rights agreement and sold her life rights in Unit 15 to a new owner. A new agreement was then concluded between the respondent and the new owner. It appears that the new owner duly paid the respondent as per the agreement.

[8] According to the applicant, the respondent undertook to effect payment to the applicant in the sum of R1 341 250.00 within six weeks from the date of the third party occupying the Unit.

[9] In breach of the life rights agreement and its undertaking, the applicant avers that the respondent failed to make any payment to the applicant.

[10] As a result, the applicant avers that she engaged her attorneys, negotiations ensued, and ultimately, on 3 March 2020, the applicant and respondent concluded an agreement of settlement in full and final settlement of all disputes between the parties (“ *the settlement agreement*”).

[11] In terms of the settlement agreement, the respondent undertook to make monthly payments to the applicant from May 2020 until the final payment in August 2020.

[12] It was further recorded that in the event of a breach on the part of the respondent, the applicant must afford the respondent written notice to remedy such breach within 10 court days, failing which the applicant would be entitled to enforce the settlement agreement and the respondent consented to judgment and the settlement agreement to be made an order of the court.

[13] The applicant contends that the respondent failed to adhere to any of the agreed terms and did not make payment for any of the installments as per the agreement. As a result, the applicant launched this application to make the settlement agreement an order of court.

[14] The respondent opposes the application. Initially, the respondent raised a point *in limine,* alleging that the applicant's affidavit was not properly commissioned. After the applicant had filed her replying affidavit curing this defect, the respondent abandoned this point *in limine.*

[15] The respondent opposes the application on the basis that this court has no power to grant an order making the settlement agreement an order of the court.

[16] Second, the respondent contends that the applicant's relief sought by the applicant's money order prayer should not be granted as this prayer appeared for the first time in the applicant's heads of argument. That this amount was never prayed for in the applicant's notice of motion. According to the respondent, the only relief sought by the applicant in her notice of motion was for an order to make the settlement agreement to be made an order of court, not for a money order payment relief.

[17] The respondent pointed out that the applicant instituted the proceedings premised on this court, making a settlement agreement an order of the court, which agreement was entered into before the proceedings were initiated. Where a settlement agreement is concluded prior to litigation, a question then arises as to whether or not that agreement can be made an order of court.

ISSUE FOR DETERMINATION

[18] The narrow issue for determination is whether a settlement agreement was concluded prior to litigation and whether or not such an agreement can be made an order of court.

[19] The high watermark of the respondent contention is that the court has no power to make a settlement agreement an order of the court where the settlement agreement was not concluded to settle any pending litigation between the parties.

[20] It is trite that our courts do not sit to merely rubber stamp settlement agreements in the absence of litigious issues. This is founded on the sensible approach that courts of law will become no more than administrators of private treaties between parties.

[21] It is common cause in the present case that when the settlement agreement was concluded there was no pending litigation between the parties.

21.1 The settlement agreement must relate to the *lis* between the parties.

21.2 It must not be objectionable in law in any way and accord with the Constitution and the law.

21.3 It holds some practical and legitimate advantage to the parties.

[22] These principles were eloquently set by the Constitutional Court in the matter of ***Eke v Parsons,***[1] when considering whether to make settlement agreements an order of the court, as follows at [25]

> *"This is in no way, means that anything agreed to by the parties should be accepted by a court and made an order court. The order can only be one that is competent proper. A court must not be mechanical in its adoption of the terms of the 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: at 38;-
> *"[I]f 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 a form of a judgment or order because in the 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.

[23] Recently, the decision of ***Eke v Parsons*** was cited with approval by the Constitutional Court in ***Avnet South Africa (Pty) Limited v Lesira Manufacturing (Pty) Limited and another***[2] the court held that it did not have the power to make the settlement agreement an order of court on the ground that no litigation had commenced between the parties.

[24] In this matter, there is no pending litigation between the parties. The rules of precedent dictate that the decision in Eke and Avnet binds the Cour***t***. I am in full agreement with these judgments. Therefore, I decline to make an order that the settlement agreement be made an order of this court.

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[1] [21016] JOL 34112

[2] [2019] JOL 41542 (GJ)

ADDITIONAL RELIEF

[25] For the first time in the applicant's heads of argument, the applicant seeks additional relief, that the respondent be ordered to pay the applicant a sum of R1 341 250.00. together with interest thereon from March 2029 to the date of final payment.

[26] The applicant's claim in this regard has no merit, and this is simple because this relief was not claimed in the applicant's notice of motion and founding affidavit. The applicant has not adduced any evidence to sustain this additional relief, which only appeared for the first time in the applicant's heads of argument, and it is thus dismissed.

[27] In all the circumstances alluded to above, I believe that the applicant has failed to discharge the onus that rested on the applicant's shoulder and that she is entitled to the order she sought. The application is accordingly dismissed.

COSTS

[28] Costs should follow suit.

ORDER

1. The order marked "X" that I signed on 10 June 2024 is made an order of this court.

J DLAMINI
Judge of the High Court
Gauteng Division, Johannesburg

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