THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 875/2023

In the matter between:

PHOZISA TOSHOLO **APPELLANT**

and

ROAD ACCIDENT FUND **RESPONDENT**

Neutral citation: *Tosholo v Road Accident Fund* (875/2023) [2025] ZASCA 21 (19 March 2025)

Coram: MOCUMIE, MABINDLA-BOQWANA, MOLEFE and KEIGHTLEY JJA and GORVEN AJA

Heard: 20 November 2024

Delivered: 19 March 2025

Summary: Civil Procedure – special plea of prior settlement – compromised claim – settlement agreement neither challenged nor rectified – Road Accident Fund Act 56 of 1996 – appeal dismissed.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Wathen-Falken AJ, sitting as court of first instance):

The appeal is dismissed with no order as to costs.

JUDGMENT

Molefe JA (Mocumie, Mabindla-Boqwana and Keightley JJA and Gorven AJA concurring):

[1] This is an appeal against the judgment and order of the Western Cape Division of the High Court, Cape Town (the high court). The crisp issue in this appeal is whether the high court was correct in upholding either or both of the two special pleas of prior settlement and prescription. The matter is before this Court with leave of the high court.

[2] On 9 July 2012, the appellant, Ms Phozisa Tosholo, was a passenger in a motor vehicle which was involved in an accident. She sustained injuries from the accident. Whilst a patient at Tygerberg Hospital, she was approached by an agent of the respondent, the Road Accident Fund (the RAF), who advised her to go to the RAF offices in the hospital regarding a claim for her injuries.

[3] The appellant subsequently lodged a claim for damages at those RAF offices. The RAF directly negotiated a settlement with her (the direct claim). On 18 November 2013, the appellant signed an offer of settlement of her claim in terms of which she was paid about R17 000. In her particulars of claim, she

alleged that she was under the impression that the settlement agreed to related only to her past loss of earnings. She expected to be contacted by the RAF regarding further payment for her pain and suffering and future loss of earnings.

[4] Subsequent to receiving the settlement amount, the appellant consulted a firm of attorneys, Kruger and Company. On 4 June 2014, the appellant's attorneys lodged a claim for compensation on her behalf with the RAF. In a letter dated 30 June 2014, the RAF informed the appellant's attorneys that a claim had already been lodged, and that the RAF could not register another claim for the appellant. The appellant's attorneys were advised to contact the RAF Direct Claims Department to 'clarify and confirm the mandate of this claim' and to 'furnish . . . written confirmation in this regard by the claimant'. This was not done.

[5] On 29 August 2014, the appellant's attorneys issued summons against the RAF for general damages, past and future loss of earnings and past and future medical expenses. The RAF pleaded to the summons without any mention of the direct claim. The appellant, at the behest of both her attorneys and the RAF, was examined by several medical practitioners who furnished medico-legal reports. By early 2017, all these reports and associated joint minutes were in place.

[6] On 30 June 2017, the RAF's attorneys informed the appellant's attorneys that they would provide them with a 'settlement offer in respect of all heads of damages' once instructions were received. On 25 August 2017, Ms Waseema Kumandan, a claims handler at the RAF, informed the appellant's attorneys in an email that the appellant had claimed with the Direct Claims Department, and that according to the RAF's records, the appellant's claim had been settled. She said they 'recommended that the file be [reopened] and a new offer be made based on the medico-legal reports'.

[7] When no offer was forthcoming, the appellant's attorneys launched an interim payment application in terms of rule 34A of the Uniform Rules of Court. The application was opposed by the RAF on the basis that the claim was a duplicate of the direct claim which had already been settled fully and finally. The appellant then withdrew the application and the summons dated 29 August 2014. She instituted the present action by issuing summons on 17 January 2018, based on what was described as an under-settlement of her original claim. The appellant claimed that the RAF had agreed to represent, advise or assist her in that claim and that it had assumed a duty of care to do so. It had failed to exercise its legal duty of care, resulting in her receiving inadequate compensation for her injuries.

[8] In consequence, the RAF filed a plea and five special pleas, two of which were adjudicated by the high court. These are the subjects of this appeal. The first special plea states that there was a full and final settlement of the appellant's claim on 18 November 2013. The second special plea is that of prescription.

[9] The high court upheld the special plea in respect of the appellant's claim being compromised and settled. It found that the summons was issued and served well out of time and consequently the special plea of prescription was also upheld. The appellant seeks an order setting aside the high court order.

The Law

[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.[1] It is important to ensure that there is a clear offer to compromise, and a transparent acceptance of the

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

settlement offer when a claim is settled, and a compromise is attained.[2] Therefore, the language of an offer to compromise in order to resolve a conflict must be precise and definite.

[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.[3] 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*),[4] 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)'.[5] The Court further held that, as a general rule, a judge should not interfere with the terms of a settlement agreement.[6] 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.[7]

[13] In *Burt N O v National Bank of South Africa*,[8] this Court held that:

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[2] Ibid.
[3] *Be Bop A Lula Manufacturing & Printing CC v Kingtex Marketing (Pty) Ltd* [2006] ZAWCHC 72; 2006 (6) SA 379 (C) at 392H-J.
[4] *Mafisa v Road Accident Fund and Another* [2024] ZACC 4; 2024 (4) SA 426 (CC), 2024 (6) BCLR (CC) 805.
[5] Ibid para 36.
[6] Ibid para 50.
[7] *Road Accident Fund v Taylor and Other Matters* [2023] ZASCA 64; 2023 (5) SA 147 (SCA) paras 37-42 and 51.
[8] *Burt N O v National Bank of South Africa* 1921 AD 59 at 67.

'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 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*).[9] 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 clear that the

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

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

[18] On a conspectus of all the evidence, the high court cannot be faulted for its finding that the appellant's claim had been compromised and no *lis* against the RAF existed or could be pursued. Consequently, the appeal stands to be dismissed. Since this is dispositive of the appeal, it is unnecessary to consider the second special plea of prescription.

[19] The path this litigation has taken is unfortunate. It should have been avoided by both the legal practitioner of the appellant and the RAF, as the latter encouraged the appellant to submit her claims directly with the RAF. Both the RAF and the appellant's attorney should have appreciated that a lay litigant such as the appellant may not be acquainted with the legal intricacies of personal damages claims.

[20] The conduct of the RAF in delaying with this matter is not free from criticism. It unnecessarily prolonged the matter after summons was issued. Later, on 29 August 2017, the RAF seemed to admit that the appellant's direct claim had been grossly under-settled, based on the medico-legal reports subsequently obtained. It was only when the appellant's attorneys launched an application for an interim payment, and in opposition to that application, that the RAF asserted that the appellant's claim had been finally settled as a direct claim. The high court correctly found that the RAF's erstwhile attorney's conduct in dealing with the matter did not impress.

[21] On the other hand, the appellant's attorneys were informed on 30 June 2014 that a claim had already been lodged and that the RAF could not register another claim for the appellant. They were advised to contact the RAF Direct Claims

Department to ‘clarify and confirm the mandate of this claim’ and to ‘furnish . . . written confirmation in this regard by the claimant’. They declined to do so and issued summons despite not clarifying the position. All of the legal costs in this matter could have been avoided had they done so.

[22] In all the circumstances of this case, the best course to follow is to make no order as to costs. Due to the manner in which the appellant’s attorneys handled her claim, it may well be inappropriate for them to seek any fees from her.

[23] In the result, the following order is made:
The appeal is dismissed with no order as to costs.

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D S MOLEFE
JUDGE OF APPEAL

Appearances

For the appellant:	K Engers SC
Instructed by:	Kruger & Co Attorneys, Cape Town
	Honey Attorneys, Bloemfontein
For the respondent:	A Montzinger
Instructed by:	The State Attorney, Cape Town
	The State Attorney, Bloemfontein.