THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 373/2024

In the matter between:

FIRSTRAND BANK LIMITED

APPELLANT

and

LOURINA WILSON N.O. **FIRST RESPONDENT**
(In her capacity as duly appointed executrix
Of the estate of the late Gavin Mark Baseley)

THE MASTER OF THE HIGH COURT CAPE TOWN **SECOND RESPONDENT**

Neutral citation: *FirstRand Bank Limited v Lourina Wilson NO and another* (373/2024) [ZASCA] 149 (10 October 2025)

Coram: MOKGOHLOA, MOTHLE, MATOJANE, UNTERHALTER and BAARTMAN JJA

Heard: 20 August 2025

Corrected: This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Supreme Court of Appeal website, and released to SAFLII. The date and time for hand-down are deemed to be 11h00 on 10 October 2025.

Summary: Contract – Compromise – Whether an alleged offer of compromise was indeed such, and if so, whether it was accepted – Principles of offer and acceptance – Effect of retaining an erroneously paid amount – Administration of Estates Act 66 of 1965 – Section 30 application for leave to execute against immovable property –

Whether exceptional circumstances existed – Application for leave to supplement founding affidavit.

ORDER

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

1 The appeal is upheld

2 The order of the court a quo is set aside and substituted with the following:

‘1 The applicant (FirstRand Bank Limited) is granted leave to supplement its founding affidavit as prayed for in its interlocutory application.

2 Judgment is granted in favour of the applicant against the first respondent (the deceased estate) for:

2.1 Payment of the sum of R2,003,415.97.

2.2 Interest on the aforesaid sum at the rate of 10.25% per annum, calculated daily and compounded monthly from 5 April 2022 to the date of final payment.

2.3 An order declaring the following immovable property specially executable: Section No. 3 as shown and more fully described on the Sectional Plan No. SS247/2008, in the scheme known as Hatfield 109 in respect of the land and 20 building or buildings situated at Gardens, in the City of Cape Town, of which section the floor area, according to the said sectional plan, is 89 square metres in extent.

2.4 The first respondent is ordered to pay the costs of the application, including the costs of the interlocutory application, on the attorney and client scale.'

3 The First Respondent is ordered to pay the costs of the appeal.

JUDGMENT

Matojane JA (Mokgohloa, Mothle, Unterhalter and Baartman JJA concurring):

Introduction

[1] This appeal concerns a claim by FirstRand Bank Limited (FNB) against the estate of the late Mr Gavin Mark Baseley (the deceased estate), represented by Ms Lourina Wilson N.O. (Ms Wilson) in her capacity as executrix. The appeal is against the judgment and order of the Western Cape Division of the High Court (*per* Wathen-Falken AJ) (the court a quo), which dismissed FNB's claim with costs. The court *a quo* found that FNB's claim against the deceased estate had been compromised on or about 30 November 2021. FNB seeks an order upholding the appeal, setting aside the court a quo's order and granting judgment for the outstanding debt, interest, and costs, as well as an order declaring the mortgaged property specially executable. The Master of the High Court, Cape Town (the Second Respondent), was cited for any interest, but did not participate in the appeal.

Background

[2] The pertinent facts, which are largely common cause, are as follows: On 16 March 2017, FNB and Mr Gavin Mark Baseley (the deceased) concluded a written loan agreement for R2.8 million, repayable over 180 months and secured by two mortgage bonds registered over the deceased's immovable property (the property). The deceased passed away on 30 October 2017. Ms Wilson, who is an heir, was appointed the executrix of the deceased's estate on 13 December 2017. FNB duly lodged its claim for R3,509,477.53 against the deceased estate on 14 December 2017, which Ms Wilson admitted.

[3] On 4 October 2021, an amount of R1,336,044.35 was deposited into the deceased's mortgage loan account held with FNB. This payment originated from the trust account of attorneys who had handled the sale of a property belonging to Ms Wilson in her personal capacity. On 11 October 2021, Ms Wilson informed FNB that

this payment had been made erroneously and demanded its repayment. FNB did not immediately respond to this demand.

[4] Following emails sent by Ms Wilson on 18 and 23 November 2021, FNB responded on 23 November 2021, acknowledging receipt of payment and stating that it was investigating the matter. On 30 November 2021, Ms Wilson sent a further email to FNB, which stated:

'Please note that due to your failure to respond to our request for repayment of the lump sum that was erroneously paid into the Bond Account, we now offer the amount that was paid into the account, in full and final payment of any outstanding amount on the loan and regard the matter as finalised.'

[5] On the same day, FNB replied, rejecting the offer unequivocally:

'Kindly note that there is no arrangement in place with the bank to accept the alleged erroneous payment as a full and final settlement of the indebtedness owed to the bank. The said payment does not settle the entire indebtedness owed, and in the absence of a formal proposal, including reasons why the bank must consider the reduced amount, the said amount cannot be accepted… The matter will be handed over to our attorneys to handle the matter going forward.'

[6] Despite this rejection, FNB retained the funds and allocated them to reduce the deceased estate's indebtedness. FNB later alleged that during a telephone conversation on 8 December 2021, Ms Wilson had agreed that the funds could remain in the estate's account. Ms Wilson denied this.

[7] On 4 April 2022, FNB issued a notice in terms of s 129(1) of the National Credit Act 34 of 2005, reflecting the reduced indebtedness of R2,003,415.96. On 14 June 2022, FNB instituted the application that gave rise to this appeal.

The high court's judgment

[8] The court a quo found that FNB's claim had been compromised. It held that Ms Wilson's email of 30 November 2021 constituted an offer of compromise, and that FNB's conduct in retaining and appropriating the funds, despite its express rejection of the offer, amounted to an acceptance of that offer. The court applied the principles

set out in *Absa Bank Ltd v Van de Vyver NO (Van de Vyver)*[1] and found that FNB's subsequent tender to repay the funds was ‘flimsy’ and did not alter the fact that a compromise had been concluded. The court did not consider it necessary to decide the issue of non-compliance with ss 29 and 30 of the Administration of Estates Act 66 of 1965.

The compromise issue

[9] A compromise, or (settlement) *transactio*, is usually a contract aimed at preventing or ending a dispute, where parties agree to new terms in substitution of their existing rights and obligations[2]. The ordinary principles of offer and acceptance govern its formation. The onus rests on Ms Wilson, as the party alleging the compromise, to prove it on a balance of probabilities. The court *a quo* found that a compromise had been effected. The central pillar of this finding was that despite FNB’s explicit written rejection of Ms Wilson’s offer, its subsequent conduct—retaining and appropriating funds it knew belonged to Ms Wilson personally—constituted an objective act of acceptance that overrode its stated intention.

[10] In *Van de Vyver*[3], this Court held that a compromise can be concluded even where there is no pre-existing dispute, but that 'the line between an offer of compromise and payment of an admitted liability is naturally finer' in such cases.

[11] In the present case, Ms Wilson's email of 30 November 2021 must be construed in its proper context. Before this email, she had consistently demanded repayment of the funds erroneously deposited in the estate account, asserting that they belonged to her personally and not to the estate. Her statement, ‘we now offer,’ indicates a change in her stance. She moved from demanding a refund of her own funds to proposing, in her capacity as the executrix, that the bank retain the funds in full and final settlement of the estate's debt.

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[1] *Absa Bank Ltd v Van de Vyver NO* [2002] ZASCA 8; [2002] 3 All SA 425 (A); 2002 (4) SA 397 (SCA) *(Van de Vyver).*
[2] *(Gollach & Gomperts(1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd 1978 (1) SA 914 (AD); Georgias v Standard Chartered Finance Zimbabwe Ltd 2000 (1) SA 126 (ZS) at 138-139).*
[3] *Absa Bank v Van der Vyver* 2002 (4) SA 397 (SCA) at paragraph 18.

[12] The bank's immediate rejection of this condition an hour later is definitive. In these circumstances, no compromise could have been reached because it was explicitly rejected. The bank's continued retention of the money after this point cannot be interpreted as acceptance. By trying to act in two capacities at once—personally and as the executrix—Ms Wilson created confusion, which resulted in the bank being unsure whether the payment was a reduction of the estate's existing indebtedness or Ms Wilson's personal money, as appears from the letter of 18 November 2021 in which FNB stated:

'You have sent proof of payment, but no report from the executor regarding repayment of FNB facility.'

[13] Faced with the bank's unambiguous rejection of her offer, Ms Wilson had two choices: she could either insist that a compromise had been concluded by the bank's retention of the funds, or she could revert to her original position and demand the refund of her personal money. She did neither. Instead, she entered into further negotiations, thereby abandoning the position that a binding compromise was already in place.

[14] In an email dated 19 January 2022, nearly two months after the alleged final settlement, Ms Wilson wrote to the bank stating: ‘My request is that the bank comes up with a reasonable settlement.'. She further mentioned her inability to 'raise a bond that would cover the full outstanding amount.' This correspondence is fatal to her defence. One does not request a new "reasonable settlement" for a debt that has already been settled in full. Nor does one refer to a ‘full outstanding amount’ if the debt has been extinguished. This language is a clear and unequivocal admission that, in her own mind, the matter was not finalised and the debt was still outstanding.

[15] FNB's retention of the funds must also be viewed in light of its subsequent explanation that it believed Ms Wilson had agreed during the telephone conversation of 8 December 2021 that the funds could remain in the account. While this conversation is disputed, the fact that FNB tendered in its replying affidavit to repay the funds (a tender which remains open) indicates that its retention was not indicative of an intention to accept the offer. Ms Wilson's failure to accept this tender or to institute

proceedings to recover the funds undermines her contention that she genuinely believed the matter had been settled.

[16] The court a quo's reliance on *Van de Vyver* is misplaced. In that case, the executrix made an offer in full and final settlement of a disputed claim. The bank appropriated the funds without rejecting the offer. This Court held that the bank's conduct amounted to acceptance. Here, by contrast, FNB rejected the offer explicitly and immediately. The subsequent appropriation was explained by a disputed telephone conversation and accompanied by a tender of repayment.

[17] On a conspectus of the evidence, Ms Wilson has failed to discharge the onus of proving that a contract of compromise was concluded. Her subsequent correspondence negates any inference of acceptance that might have been drawn from FNB's retention of the funds. The court a quo thus erred in finding that the claim had been compromised

The section 30 application

[18] It is a trite principle that an applicant must make out its case in its founding affidavit. Section 30 provides that no legal proceedings may be instituted against a deceased estate within the period specified in the s 29 notice. Compliance is therefore a necessary averment for the applicant's cause of action. FNB failed to plead and prove this in its founding affidavit.

[19] To cure this defect, FNB launched an interlocutory application for leave to supplement its papers with proof of the s 29 notice publication and to make the necessary averments. Ms Wilson contends that this is impermissible, as an applicant cannot create its cause of action in supplementary affidavits. While the rule is not to be lightly departed from, the court retains a discretion to allow further affidavits where it is in the interests of justice. This discretion is typically exercised in exceptional circumstances.

[20] In *Standard Bank of South Africa Ltd v Nkhahle*[4], the court held that an application for leave to execute against a deceased estate's property in terms of s 30*(b)* is premature if the s 29 notice has not been published and the period for lodging claims has not expired. However, the court in that matter granted judgment subject to the condition that the sale in execution be deferred until after compliance with s 29.

[21] In our view, such circumstances are present in this case. FNB is a secured creditor, and the debt (absent the failed compromise defence) is undisputed. The purpose of s 30 is to allow the executor time to assess all claims and to prevent a single creditor from gaining an unfair advantage through early litigation. That purpose is not truly served by non-suiting a secured creditor whose claim was long since admitted, especially where the estate administration has been subject to inordinate delays. The evidence FNB seeks to introduce is a formal, non-contentious fact: the date of a notice published in the Government Gazette. To dismiss the main application on this basis would be an exercise in formalism, which would only lead to wasted costs and further delay as FNB would inevitably re-launch the application on properly constituted papers. The interests of justice, therefore, favour the granting of leave to supplement the affidavit.

The Merits of the Section 30 Order

[22] Ms Wilson argues that an order under s 30 is not lightly granted and requires "exceptional circumstances," which she submits are absent. We disagree. While the court must exercise caution, the primary consideration is fairness to all interested parties. The deceased passed away in October 2017. Over seven years have passed without the estate being finalised. FNB, a secured creditor whose claim was admitted at the outset, has been patient. The ongoing delay is prejudicial to FNB, as interest continues to accrue while its security cannot be realised. The inordinate and unexplained delay in winding up the estate, coupled with FNB's position as a secured creditor holding an admitted claim, constitutes sufficient reason to grant the order. To hold otherwise would be to permit the administrative process to indefinitely frustrate a creditor's undisputed contractual and real rights.

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[4] *Standard Bank of South Africa Ltd v Nkhahle* [2021] ZAWCHC 75; 2021 (5) SA 642 (WCC).

[23] In *Nedbank Ltd v Steyn*[5], this Court recognised that the statutory claims procedure is not always speedy or inexpensive, and that creditors retain their common law rights to enforce claims against deceased estates. In the circumstances, and given the lengthy delay, this is an appropriate case for the grant of leave to execute in terms of s 30*(b).*

Conclusion

[24] In summary, we find that no contract of compromise was concluded on 30 November 2021, as Ms Wilson's own subsequent conduct demonstrated that she did not consider the matter finalised. We further find that it is in the interests of justice to permit the FNB to supplement its founding affidavit and that, on the merits, a proper case has been made for an order in terms of s 30 of the Administration of Estates Act, primarily due to the inordinate delay in the finalisation of the deceased estate. The appeal must therefore succeed.

Order

[25] In the premises, the following order is made:

1 The appeal is upheld

2 The order of the court a quo is set aside and substituted with the following:

‘1 The applicant (FirstRand Bank Limited) is granted leave to supplement its founding affidavit as prayed for in its interlocutory application.

2 Judgment is granted in favour of the applicant against the first respondent (the deceased estate) for:

2.1 Payment of the sum of R2,003,415.97.

2.2 Interest on the aforesaid sum at the rate of 10.25% per annum, calculated daily and compounded monthly from 5 April 2022 to the date of final payment.

2.3 An order declaring the following immovable property specially executable: Section No. 3 as shown and more fully described on the Sectional Plan No. SS247/2008, in the scheme known as Hatfield 109 in respect of the land and 20 building or buildings situated at

[5] *Nedbank Ltd v Steyn* [2015] ZASCA 30; [2015] 2 All SA 671 (SCA); 2016 (2) SA 416 (SCA) at para 12.

Gardens, in the City of Cape Town, of which section the floor area, according to the said sectional plan, is 89 square metres in extent.

2.4 The first respondent is ordered to pay the costs of the application, including the costs of the interlocutory application, on the attorney and client scale.'

3 The First Respondent is ordered to pay the costs of the appeal.

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KE MATOJANE

JUDGE OF THE SUPREME COURT OF APPEAL

APPEARANCES

For Appellant:	M De Oliveira
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