Trusts & Estates Law

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Conclusion of a compromise with a creditor of a deceased estate requires explicit agreement

The case of *FirstRand Bank Limited v Lourina Wilson NO and Another* (373/2024) [ZASCA] 149 (10 October 2025) dealt with an appeal to the Supreme Court of Appeal (SCA) which overturned the High Court's decision that a debt against a deceased estate was fully settled through a compromise agreement.

Background and High Court decision

In 2017, FNB advanced a loan of R2.8 million to Mr Baseley, which was secured by two mortgage bonds over his immovable property. Later that year, Baseley passed away and one of his heirs, Mrs Wilson, was appointed as executrix. Following her appointment, FNB lodged a claim against the estate for R3,509,477.53, which was admitted by Wilson.

In 2021, an amount of R1,336,044.35 (the funds), belonging to Wilson in her personal capacity, was erroneously transferred into the deceased's mortgage loan account with FNB. Wilson discovered the error and demanded repayment of the funds in her personal capacity, as they belonged to her personally. Despite various emails and follow-ups, FNB did not respond. In November 2021, Wilson contacted FNB, in her capacity as executrix, to "*now offer the amount that was paid into the account, in full and final payment of any outstanding amount on the loan*" and to "*regard the matter as finalised*". FNB then replied on the same day explicitly rejecting the offer, stating that no such agreement was in place, that the payment did not extinguish the full indebtedness and that the matter would be referred to its attorneys. FNB, however, retained the funds and allocated them to reduce the deceased's debt.

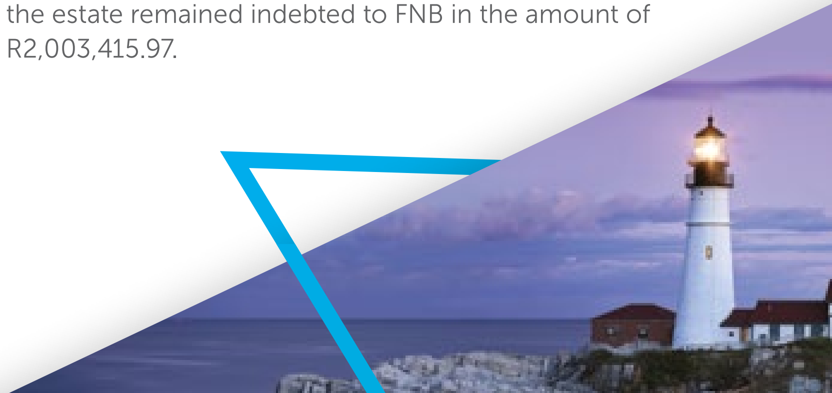
In 2022, FNB instituted an application in the Western Cape Division of the High Court for the outstanding loan amount, where Wilson argued that a compromise or settlement had been concluded and, therefore, the debt had been extinguished. The High Court held in favour of Wilson and dismissed FNB's application due to the bank's retention of the funds, which the High Court found constituted acceptance by conduct of Wilson's offer of full and final settlement.

SCA

The SCA overturned the court a quo's decision and upheld FNB's appeal.

The SCA found that Wilson had indicated, by her conduct, that she did not, in fact, consider the matter finalised. Therefore, she could not reasonably rely on her defence that the matter was finalised. Initially, she insisted on repayment in her personal capacity before later changing her stance to offer the money as settlement of the debt, as executrix. This offer was explicitly rejected by FNB, meaning there could be no compromise concluded. She later requested that FNB "*[come] up with a reasonable settlement*" as the estate would not be able to settle the outstanding amount, thereby admitting that the debt was not, in fact, finally settled.

Therefore, the SCA held that no compromise had been concluded, the payment had only reduced the debt and the estate remained indebted to FNB in the amount of R2,003,415.97.



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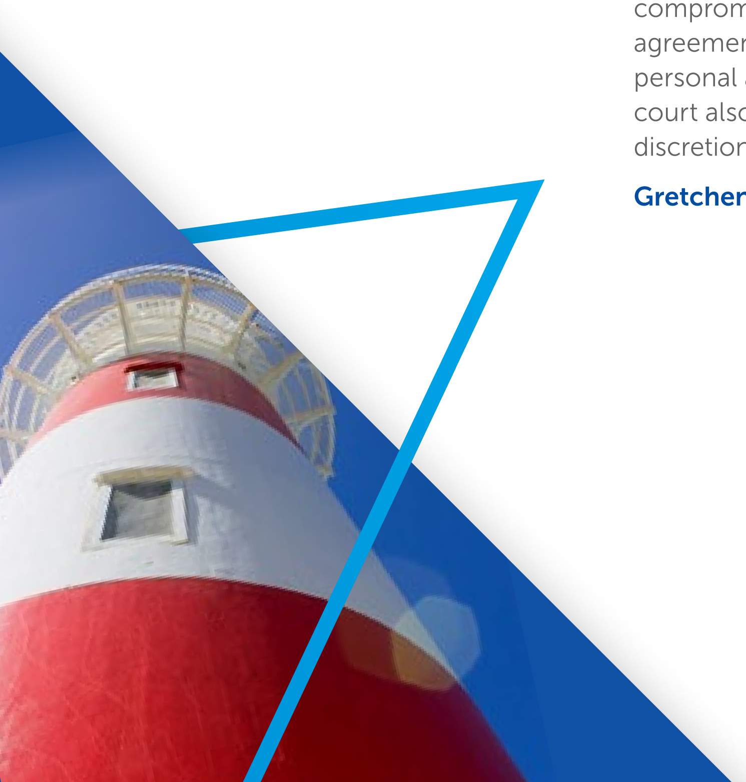
Additional issue

The SCA also heard FNB's application for leave to file a supplementary affidavit. FNB initially failed to include proof that it had complied with the statutory notice requirements under sections 29 and 30 of the Administration of Estates Act 66 of 1965 and sought leave to file a supplementary affidavit to rectify the defect. The court emphasised that it has the discretion to allow supplementary affidavits where it is in the interest of justice. The SCA granted leave to supplement the affidavit, citing the fact that the additional evidence concerned formal, non-contentious proof and refusing leave would result in unnecessary delay. Furthermore, the exceptional circumstances in support of the leave application were that the deceased had passed away over seven years prior and the debt was secured and admitted, without settlement, and further delay would unduly prejudice the creditors.

Conclusion

From this case, we can see that a crucial element for the conclusion of a compromise with a creditor of a deceased estate is not conduct but explicit agreement. Furthermore, the distinction between an executor/executrix's personal and professional capacity is crucial to avoid error and confusion. The court also highlighted the importance of the interests of justice in exercising its discretion to grant leave to file supplementary affidavits.

Gretchen Barkhuizen-Barbosa, Emily West and Danielle Goldschagg



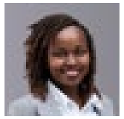
OUR TEAM

For more information about our Trusts & Estates Law practice and services in South Africa, Kenya and Namibia, please contact:

Gretchen Barkhuizen-Barbosa
Practice Head & Director:
Trusts & Estates
T +27 (0)11 562 1250
E gretchen.barkhuizenbarbosa@cdhlgal.com

Frieda Kishi
Director | Namibia
T +264 83 373 0100
E frieda.kishi@cdhlegal.com

Emily West
Director:
Trusts & Estates
T +27 (0)11 562 1182
E emily.west@cdhlegal.com



Christine Mugenyu
Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E christine.mugenyu@cdhlegal.com

Danine Steyn
Senior Associate:
Trusts & Estates
T +27 (0)21 481 6417
E danine.steyn@cdhlegal.com

Sian Williams
Associate:
Trusts & Estates
T +27 (0)11 562 1695
E sian.williams@cdhlegal.com

JOHANNESBURG
1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN
11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI
Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

ONGWEDIVA
Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.
T +264 (0) 81 129 1868 E cdhnamibia@cdhlegal.com

STELLENBOSCH
14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

WINDHOEK
1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia.
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com