



# Real Estate Law & Conveyancing

3 February 2026

SOUTH AFRICA

- When settlements backfire:  
A cautionary tale for property  
owners and HOAs



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## When settlements backfire: A cautionary tale for property owners and HOAs

In an era where community-scheme disputes are increasingly common, a recent court decision has provided clarity on the boundaries of acceptable settlement and litigation conduct. *Koster v Centurion Homeowners Association (NPC) and Others* (2024/091277) [2025] ZAGPPHC 1225 (11 November 2025) serves as a stark reminder that parties cannot cherry-pick the benefits of a settlement offer while simultaneously pursuing further litigation to fight for costs.

### Background

The dispute arose when a property owner and her homeowners association (HOA) reached an impasse over the approval of amended building plans for her premises. Following the HOA's initial refusal to grant approval, the property owner-initiated review proceedings in the High Court, contesting the decision. However, once legal proceedings had begun, the HOA reassessed its stance. It granted approval for the revised plans and sent them to the property owner by means of a formal 'Rule 34' settlement proposal (a formal court rule governing settlement tenders). The proposal was explicitly designated "*without prejudice*" and stipulated clearly that the HOA would not bear any of the property owner's incurred legal costs.

### Facts

The property owner accepted the approved plans, which she then used to secure municipal approval. Nevertheless, she pursued the litigation against the HOA for legal costs, contending that the HOA's approval of the building plans represented a separate administrative decision, distinct from the settlement proposal, and that she was consequently entitled to continue with the review in order to obtain a costs order.



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This approach – accepting the substantive relief while rejecting the accompanying terms – represented a calculated attempt to secure both the desired outcome and a favourable costs award. It was, in essence, an attempt to have one's cake and eat it too.

## Finding

The court dismissed the property owner's contention and claim for legal costs, and held that the approval of the building plans by the HOA was plainly tendered as part of a conditional settlement arrangement. By the time the matter came before the court, the dispute had effectively been resolved, as the property owner had already secured the remedy she had sought, rendering the review application moot.

## Implications for future disputes

The judgment conveys an unmistakable message to parties engaged in HOA and property-related disputes: efforts to recharacterize a settlement proposal as an "*administrative concession*" will fail where the evidence demonstrates otherwise. Litigation tactics designed to extract a costs order after substantive relief has already been obtained will not be tolerated. Put simply, one cannot accept the benefit while rejecting the conditions of a settlement proposal.

This judgment reinforces the principle that settlement mechanisms exist to facilitate dispute resolution, not to create opportunities for gamesmanship. The courts will protect parties who engage in good-faith settlement efforts and will not reward those who attempt to manipulate the process. For community schemes and their members, the message is clear: settle with integrity.

**Samantha Kelly**

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