IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: **YES**/~~NO~~
(2) OF INTEREST TO OTHER JUDGES: **YES**/~~NO~~
(3) REVISED

DATE: **25 November 2025**

SIGNATURE:.....

Case No. A333/2024

In the matter between:

INHLAKANIPHO CONSULTANTS (PTY) LTD **APPELLANT**

And

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

Coram: Mngqibisa-Thusi, Nyathi & Millar JJ

Heard on: 9 October 2025

Delivered: 25 November 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 25 November 2025.

Summary: Tax Administration Act 28 of 2011 — Parties bound by agreement entered into lawfully — agreement represented the final agreed position between the parties — intention of the parties can be ascertained from the agreement — intention was a settlement of the appellant's liabilities of the specified periods — confidence in agreements entered with SARS and its abiding with the terms of those agreements is paramount — appeal upheld.

JUDGMENT

MILLAR J (MNGQIBISA-THUSI ET NYATHI JJ CONCURRING)

[1] This appeal concerns one of the two certainties of life – tax. The appellant is a taxpayer who entered into an agreement with the respondent for the payment of tax relating to certain periods. The appellant complied with its obligations in terms of the agreement.

[2] Ordinarily, it is to be expected in such circumstances that the appellant, the taxpayer, having *"rendered unto Caesar that which is Caesar's,"* would have discharged its obligation and that, having entered into an agreement with reciprocal obligations, *Caesar* would do the same.

[3] The heart of this appeal is whether the respondent is bound to the terms of the agreement that it has entered into with the appellant. It is common cause between the parties that the appellant has complied with its obligations in terms of the agreement and that the agreement, in all its terms and particularly having regard to the Tax Administration Act[1] (TAA) was entered into lawfully and is binding on both the parties[2].

[4] When the matter came before the Court *a quo*, the appellant sought the following order:

> *"1. It is declared that the applicant is not indebted to the respondent or the South African Revenue Service in respect of any of the "amounts in dispute" as defined in clause 1.1.3 of the written agreement between the parties dated 20 September 2018, in respect of the "tax periods under dispute" as defined in clause 1.1.15 of the said written agreement, or otherwise.*
>
> *2. The respondent is ordered, within ten (10) days after the date of this order, to render an account to the applicant in respect of any interest that may be due and payable by the applicant to the respondent, in respect of the "amounts in dispute" as defined in clause 1.1.3 of the written agreement referred to in paragraph 1 above.*
>
> *3. The respondent is ordered to, in respect of such account, take into account the provisions of Chapter 12 and Chapter 13 of the Tax Administration Act, 28 of 2011 (as amended).*

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1 28 of 2011.
2 Section 148 of the TAA.

4. *The parties are ordered to, within a period of thirty (30) thirty business days after the rendering of such account, debate such account between themselves.*

5. *The applicant is authorised to again enroll this application pursuant to the debate of such account on the same papers, duly supplemented, for consequential relief.*

6. *The respondent is ordered to pay the applicant's costs on the scale applicable between attorney and client, such costs to include the costs consequent upon the employment of two counsel, including the reserved costs of 04 February 2022:"*

[5] The Court *a quo*, dismissed the application with costs.[3] In its judgment, it correctly identified that "*the main issue is not, as the notice of motion suggests, whether the applicant has paid amounts stipulated in the Agreement. On the contrary, it is whether the respondent has correctly allocated the payment made by the applicant in respect of the periods in question.*" [my underlining]

[6] What was agreed between the parties and what happened after the appellant had made the agreed payment?

[7] Pursuant to a series of assessments raised by the respondent in respect of the VAT liability of the appellant, objections were lodged. The objections were allowed in part and in respect of the part that was not allowed, this was dealt with by way of an appeal noted to the Tax Court in terms of section 107 of the TAA.

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[3] There had also been an application brought by the respondent before the Court *a quo*, for condonation for the late filing of its answering affidavit and that application was granted with no order as to costs. When this appeal was heard, although the order granting condonation was also appealed against, it was not pursued at the hearing. No more need be said on this aspect other than that with the respondent's version before the Court *a quo* and now this Court, the appeal may be properly considered.

This appeal was resolved by way of a referral to alternative dispute resolution.[4] This culminated in a written agreement of settlement which was signed by the parties on 17 September 2018 and 20 September 2018, respectively. The agreement provided, *inter alia,* that:

> *"The Commissioner considers that it will be to the best advantage of the State to resolve the Dispute on the basis as set out herein. The Parties are in agreement that this Agreement is fair and equitable to both Parties. The Parties accordingly agree to enter into this Agreement, which for purposes of completeness, incorporate issues resolved in terms of both Rule 23 and Rule 24 and such issues will therefore not be contained in a separate agreement." [My underlining].*

[8] The parties furthermore agreed on a revision and reduction of prior assessments and the amount of understatement penalties. After the calculation of these amounts, the agreement recorded in paragraph 4.3.1 that:

> *"The Appellant, therefore, accepts a total liability for the revised amounts in dispute, totaling R5 910 972,60, as calculated from the amounts stated in clauses 4.1.2 and 4.2.1.1."*

[9] The respondent also undertook to alter the assessments within 30 days from the effective date of the agreement to give effect to it and additionally, in consequence thereof:

> *"The Appellant has agreed to pay the total liability for the revised amounts in dispute, totalling R5 910 972,60, as per clause 4.3.1 within 21 days from the date of altering the Assessments. . ."*

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[4] Rule 23 of the rules of the Tax Court in terms of section 103 of the TAA.

[10] Lastly, besides agreeing that no variation of the agreement would be valid save were it to be recorded in writing, the appellant and the respondent agreed:

> *"This Agreement represents the final agreed position between the Parties and includes all the issues in Dispute."*

[11] That the agreement represented the final agreed position between the appellant and the respondent appears in both the preamble of the written agreement as well as in the main body of the agreement. It is clear from this that it was intended that the agreement would bring an end to the dispute relating to the two tax periods (04/2010 and 02/2014) in question, not only in respect of the amounts to be paid for those two periods but also in respect of the understatement penalties.

[12] Properly construed, the agreement provided that once the agreed amounts had been paid all that would be left to be calculated, because the agreed amounts had not yet been paid when the agreement was signed, was the interest. The calculation of this could self-evidently only occur once the revised assessments had been raised and payment made.

[13] It is clear in terms of the agreement that the interest is calculable as a fixed amount. The interest can be calculated by taking the date on which payment of the respective assessments were due as the starting date and the date on which payment was made as the ending date. The agreement, in its terms, is clear in this regard. The calculation is for a fixed period and readily determinable.

[14] So, why, if the parties had agreed the amount to be paid and the respective time periods and the appellant complied with what had been agreed, was it necessary for the appellant to approach the Court *a quo* for the orders as set out in paragraph 4 above? The orders sought may be divided into three categories. The first is a declarator of a factual position. The second, is to compel the respondent to render an account for the interest due, together with the mechanism by which, in the event of a dispute, it could be resolved. The last is costs.

[15] It is certainly unusual that a taxpayer in the position of the appellant would have to approach the Court for such orders. The reason that this was precipitated was a *volte face* on the part of the respondent.

[16] Notwithstanding the clear and unequivocal terms of the agreement entered between the parties, the respondent inexplicably decided to take the position that the payment of the agreed amount did not discharge the liability for the periods. It took the position that once the liability for the periods had been determined in respect of the assessments and understatement penalties, interest began to run immediately.

[17] The respondent took the view that when payment of the agreed amount was made, this did not discharge the principal debt, leaving only interest outstanding but was in reduction of the combined amount of the original assessment, understatement penalties and interest that had been accruing on an ongoing basis. The consequence of this approach is that when payment of the agreed amounts was made, this only served to reduce the total outstanding inclusive amount, was insufficient to touch the principal debt as it only discharged interest and penalties and for that reason, the principal debt with further interest was now still outstanding.

[18] This approach by the respondent was hinged upon section 166 of the TAA which provides:

> *"166. Allocation of payments. –*
>
> *(1) Despite anything to the contrary contained in a tax Act, SARS may allocate payment made in terms of a tax Act against an amount of penalty or interest or the oldest amount of an outstanding tax debt at the time of the payment, other than amounts –*
>
> *(a) for which payment has been suspended under this Act; or*

(b) that are payable in terms of an instalment payment agreement under section 167.

(2) SARS may apply the first-in-first out principle described in subsection (1) in respect of a specific tax type or a group of tax types in the manner that may be prescribed by the Commissioner by public notice.

(3) In the event that a payment in subsection (1) is insufficient to extinguish all tax debts of the same age, the amount of the payment may be allocated among these tax debts in the manner prescribed by the Commissioner by public notice.

(4) The age of a tax debt for purposes of subsection (1) is determined according to the duration from the date the debt became payable in terms of the applicable Act." [My emphasis].

[19] While section 166 of the TAA is permissive in its terms with the use of the word "may" providing the respondent with a discretion as to whether it will allocate payments in the way prescribed in the TAA, this was nothing more than a convenient peg upon which to hang its failure to comply with what had been expressly agreed with the appellant.

[20] The Court *a quo,* in dealing with this aspect, summarised the opposition of the respondent to the orders sought as follows:

> *"However, the respondent explained that its accounting system did not permit the allocation of payments to capital rather than interest and that what was sought by the applicant was accordingly not possible – at least not without a substantial overhaul of its system. It also stated that that fact had been communicated to the applicant. The applicant contended that that was not a sufficient answer as, so the argument went, what the respondent was seeking to rely on was inconvenience rather than impossibility."*

[21] Having regard to the terms of the agreement between the parties, and the relative ease with which the calculation of the interest can be effected as has been set out above, this militates in favour of the position adopted by the appellant.

[22] However, the Court *a quo* rejected this and went on to explain:

> *"I have no hesitation in rejecting this argument. Impossibility is, in a sense, relative. Indeed, many things which are frequently referred to as impossible are in fact achievable given a sufficient budget. That is, however, not the standard which the law imposes. The respondent has an existing accounting system which, as explained in its papers, conforms to the provisions of section 166 of the Act, which system applies to all taxpayers. It is not possible for that system to allocate the payments in the way in which the applicant seeks to have them allocated and the respondent is not obliged to cause its system to be overhauled simply to accommodate the applicant. Thus, given the context, what the applicant seeks to have done, and what the respondent appears to at a point to have agreed to do, falls to be regarded as impossible."* [my underlining].

[23] The Court *a quo* then went on to hold that *"the fact that the amounts which were disputed comprised capital and interest did not imply that the respondent was bound to allocate the payment made by the applicant to those heads. The Agreement, which is silent on the issue, falls to be construed in the light of the provisions of the Act."*

[24] In the case of written agreements, regard must be had to the contents of the agreement. From these contents, given their ordinary meaning, the intention of the parties is ascertained. It is trite that this is to be done contextually and in a businesslike manner.[5]

[25] It is readily apparent that what was intended was a settlement of the appellant's liabilities for the specified periods. The reference in the agreement to it being *"fair and equitable to both Parties"* and the repeated references to it being the *"final*

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[5] *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA) at para [25]; *South African Nursing Council v Khanyisa Nursing School (Pty) Ltd and Another* 2024 (1) SA 103 (SCA); *Van Zyl NO v Road Accident Fund* 2022 (3) SA 45 (CC) (minority judgment) at para [130].

agreed position between the Parties and includes all the issues in Dispute" make plain what was intended between the parties. I am fortified in this view, having regard to the provisions of sections 148(1) and (2) of the TAA, which provide that:

> *"(1) The settlement agreement represents the final agreed position between the parties and is in full and final 'settlement' of all or the specified aspects of the 'dispute' in question between the parties.*
>
> *(2) SARS must adhere to the terms of the agreement, unless material facts were not disclosed as required by section 147(1) or there was fraud or misrepresentation of the facts."*

[26] The computer or other systems which the respondent operates in its tax collection process, are beyond the realm of the agreement and peculiarly within the knowledge of the respondent. This was so at the time that the agreement was entered into and subsequently. Furthermore, when the respondent entered into the agreement, it knew of the provisions of section 148 of the TAA and that the appellant would be entitled to rely on those provisions in requiring SARS to comply with its obligations in terms of what had been agreed.

[27] In this regard, it was argued on behalf of the respondent that the appellant could not claim a *"reasonable reliance on any representation allegedly made by SARS regarding Payment Allocation, as Payment Allocation is governed by statute not by private representations or agreements."*

[28] The Supreme Court of Appeal in *Trustees, Oregon Trust and Another v Beadica 231 CC and Others,*[6] held:

> *". . . the parties will know what their contract means and that they are entitled to rely on its terms, unless these are against public policy, or their enforcement would be unconscionable."*

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[6] 2019 (4) SA 517 (SCA) at para [26].

[29] The Constitutional Court in *Beadica 231 CC and Others v Trustees, Oregon Trust and Another,*[7] expounded the position of our law in this regard as follows:

> *"[71] There is only one system of law in our constitutional democracy. As recognised by this Court in Pharmaceutical Manufacturers, this system of law is shaped by the Constitution, which is the supreme law, and all law, including the common law, derives its force from the Constitution and is subject to constitutional control. The determination of public policy is now rooted in the Constitution and the objective, normative value system it embodies. Constitutional rights apply through a process of indirect horizontality to contracts. The impact of the Constitution on the enforcement of contractual terms through the determination of public policy is profound. A careful balancing exercise is required to determine whether a contractual term, or its enforcement, would be contrary to public policy. As explained by the Supreme Court of Appeal in Barkhuizen SCA, and endorsed by this Court in Barkhuizen, the Constitution requires that courts – 'employ [the Constitution and] its values to achieve a balance that strikes down the unacceptable excesses of "freedom of contract", while seeking to permit individuals the dignity and autonomy of regulating their own lives [emphasis added].*
>
> *[72] It is clear that public policy imports values of fairness, reasonableness and justice. Ubuntu, which encompasses these values, is now also recognised as a constitutional value, inspiring our constitutional compact, which in turn informs public policy. These values form important considerations in the balancing exercise required to determine whether a contractual term, or its enforcement, is contrary to public policy.*
>
> *[73] While these values play an important role in the public policy analysis, they also perform creative, informative and controlling functions in that they underly and inform the substantive law of contract. Many established doctrines of contract law are themselves the embodiment of these values." [references omitted].*

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[7] 2020 (5) SA 247 (CC) at paras [71]-[73].

[30] It is clear and unequivocal from the written agreement entered between the parties what they intended by entering into that agreement. The position of the respondent is a unique one. It can hardly be said that in entering into the agreement with the appellant, that it was disadvantaged in any way. It knew its capabilities as well as its limitations when it did so. The agreement, it is common cause, is lawful in all respects and it is consonant with public policy that taxpayers pay what is due by them and that the respondent receive this from them in discharge of that obligation.

[31] I agree with the characterisation by the appellant that the plea *ad miseracordium* by the respondent that it would be subjected to inconvenience is no defence at all. Although not before this Court, it is likely that many of agreements in similar terms have been entered into by the respondent with taxpayers over the course of the last eight years since the agreement in this matter was concluded.

[32] The Court *a quo* accepted uncritically the version of the respondent that it would require an overhaul of its systems and that it could not implement the agreement in the terms it had agreed.

[33] The bare allegation made in the answering affidavit was that:

> *"In accordance with section 166 of the TAA, SARS has developed payment allocations that prioritise the allocation of payments to older periods (old tax debts) as described above. This allocation pattern prescribed by the Payment Allocations is best suited to the efficient running of SARS because it is in line with section 166 of the TAA.*
>
> *A deviation from the section 166 Payment Allocations is therefore not authorised.*
>
> *I am advised that such a deviation is not presently possible without a significant overhaul of current systems and procedures and given the immense work burden that SARS is under, this deviation is prohibitively cumbersome and will prejudice the efficient running of the respondent."*

[34] There was no evidence before the Court *a quo* to demonstrate that this was in fact so. This bare allegation is hearsay[8], unsubstantiated and clearly in conflict with the agreement and yet this was surprisingly accepted uncritically and elevated to the status of established fact, grounding the finding of impossibility.

[35] Given the position of the respondent,[9] confidence in agreements entered with it and its abiding with the terms of those agreements is paramount. The respondent is in the same position as any other party who enters a contract and if it cannot comply it behooves it to take such steps as it may legally do so to order its affairs in consequence thereof. It is simply not open to the respondent to adopt a contrived and self-serving reliance on section 166 of the TAA when on the facts of the matter it is clearly not entitled to do so.

[36] By entering into the agreement in the terms that it did, it eschewed its entitlement to rely upon section 166 of the TAA for the specific periods concerned. This was lawful and it was bound to what it had agreed in terms of section 148(2) of the TAA.[10] To adopt any other interpretation would render the concept of an agreement entered with the respondent in terms of the relevant rules of the Tax Court entirely pointless and would in fact dis-incentivize settlement because parties would know that no reliance could be placed upon any agreement that had been reached.

[37] For the reasons set out above, the appeal will succeed.

[38] The appellant sought punitive costs in the Court *a quo*. They did not seek punitive costs in this Court. Had the appellant sought punitive costs in this Court, I would seriously have considered granting it given the circumstances of the matter.

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8 The respondent sought to rely on *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) in support of the argument that the simple 'say so' of a representative of the respondent who had been "advised" of a state of affairs was sufficient for a Court to accept it without more. In the present case, having regard to the provisions of the written agreement, the common cause position that the agreement was lawful in all respects and section 148(2) of the TAA, the version proferred is simply not acceptable.

9 See *Metcash Trading Ltd v Commissioner, SARS and Another* 2001 (1) SA 1109 (CC) at para [23].

10 *Minister of Public Works v Kyalami Ridge Environmental Association* 2001 (3) SA 1151 (CC).

[39] In the circumstances, I propose the following order:

[39.1] The appeal is upheld.

[39.2] The respondent is ordered to pay the costs of the appeal on the scale as between party and party, which costs are to include the costs consequent upon the engagement of two counsel. The costs of counsel are on scale C.

[39.3] The order of the Court a quo is set aside and replaced with the following:

"1. It is declared that the applicant is not indebted to the respondent or the South African Revenue Service in respect of any of the "amounts in dispute" as defined in clause 1.1.3 of the written agreement between the parties dated 20 September 2018, in respect of the "tax periods under dispute" as defined in clause 1.1.15 of the said written agreement, or otherwise.

2. The respondent is ordered, within ten (10) days after the date of this order, to render an account to the applicant in respect of any interest that may be due and payable by the applicant to the respondent, in respect of the "amounts in dispute" as defined in clause 1.1.3 of the written agreement referred to in paragraph 1 above.

3. The respondent is ordered to, in respect of such account, take into account the provisions of Chapter 12 and Chapter 13 of the Tax Administration Act, 28 of 2011 (as amended).

4. *The parties are ordered to, within a period of thirty (30) thirty business days after the rendering of such account, debate such account between themselves.*

5. *The applicant is authorised to again enroll this application pursuant to the debate of such account on the same papers, duly supplemented, for consequential relief.*

6. *The respondent is ordered to pay the applicant's costs on the scale applicable between attorney and client, such costs to include the costs consequent upon the employment of two counsel, including the reserved costs of 04 February 2022:"*

A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE AND IT IS SO ORDERED

N MNGQIBISA-THUSI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE,

J S NYATHI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	9 OCTOBER 2025
JUDGMENT DELIVERED ON:	25 NOVEMBER 2025
COUNSEL FOR THE APPELLANT:	ADV. P SWANEPOEL SC ADV. C BOONZAAIER
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