REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED: ✓

31/8/2022
DATE SIGNATURE

APPEAL CASE NO: A133/2021

CASE NO: *a quo* 52088/2018

In the appeal between:

JOHN WRIGHT VENEERS (SA) (PTY) LTD Appellant/Plaintiff

and

KOMATILAND FORESTS SOC (PTY) LTD Respondent/Defendant

JUDGMENT: FULL COURT

HOLLAND-MUTER AJ:

[1] The appeal before this court arises from a custom cut agreement entered into by the parties during September 2014. In terms of the agreement the

appellant would process the saw logs delivered by the respondent for an agreed processing fee. The agreement was later amended by two addendums which increased the processing fee. The custom cut agreement made provision for a specific volume of log to be delivered to the appellant annually.

[2] It is common cause that the Respondent breached the said custom cut agreement for failing to deliver the agreed volume of log. The Appellant issued summons against the respondent in the court *a quo* for the breach of the agreement by the respondent failing to deliver the agreed volume of logs to the appellant's premises to be processed.

[3] This resulted in a meeting between representatives of the parties on 14 November 2014. The parties settled the dispute in principle during the meeting and the content of the minutes reflecting what transpired at the meeting is not in dispute. Three of the persons present at this meeting testified during the trial, namely Hannes Human and Neil Gouws on behalf of the appellant and Lucky Nonyane on behalf of the respondent. There were other persons present at the meeting but they did not testify at the trial. A certain Mr Murovhi also testified but his name does not appear on the minutes of the meeting. Mr Harvey Theron was also present at the meeting on behalf of the respondent.

[4] On 15 November 2016, one day after the meeting, Mr Nonyane ("Nonyane"), the defendant's Custom Cut Manager, mailed the appellant and undertook that the respondent would deliver 7 800 cubic meters of logs to the

appellant to process during December 2016 and January 2017. It needs to be noted that Nonyane was present at the meeting on 14 November 2014.

[5] Subsequent thereafter, two letters drafted by Mr G C Theron on behalf of the respondent were exchanged between the parties, the first on 18 November 2016 (*"first letter"*) and the second on 22 November 2016 (*"second letter"*). It can be accepted that he (Theron) was the person referred to in the minutes as Harvey Theron. The two letters contained the alleged terms of the agreement resulting from the meeting on 14 November 2016.

[6] The parties differ as to the exact terms set out in the two letters reflecting the settlement reached at the aforesaid meeting. The main bone of contention between the parties is the issue whether the Respondent would produce and supply additional log volumes in December 2016 and January 2017 to bring the levels of log deliveries to contractually expected volumes as set out in par 2.2 in the first letter.

THE DIFFERENT CONTENTIONS BY THE PARTIES WITH REGARD TO THE LETTERS:

[7] The appellant contends that par 2.2 is indeed one of the terms of the settlement while the respondent contends that although par 2.2 in the first letter is an undertaking by the respondent in terms of the settlement to produce and supply additional volumes in December 2006 and January 2017 to

bring the levels of log delivery to contractually expected volumes, it is no longer part of the settlement according to the second letter but relates to clause 3.3 of the original log cutting agreement.

[8] The respondent contends that the second letter only provides for an adjusted monetary amount (from the amount of R 2 200 000,00 in the first letter to the amount of R 2 500 000,00 in the second letter) and that absence of par 2.2 (in the first letter) in the second letter is indicative that it was not part of the settlement reached at the mentioned meeting, resulting in a denial that it was a material term of the settlement agreement.

[9] Both parties agree that the meeting of 14 November 2016 and subsequent agreement reached is embodied in the two letters dated 18 and 22 November 2016. It is a mere interpretation of the two letters to determine whether the challenged par 2.2 in the first letter is indeed a material term of the final settlement reached between the parties to lay the dispute to rest. The dispute arose from the initial custom cut agreement entered into by the parties on or about 26 September 2014.

THE LEGAL POSITION:

[10] A settlement or compromise is a contract with the purpose to end or avoid litigation, whether embodied in a court order or not. It brings the dispute to an end. See **Gollach & Comperts (1967) (Pty)Ltd v Universal Mills &**

Produce Co (Pty)LTD 1978 (1) SA 914 AD; Georgias v Standard Bank Chartered Finance Zimbabwe Ltd 2000 (1) SA 126 (ZS) at 138-139.

[11] A compromise is a substantive contract which exists independently of the original cause of action that gave rise to the compromise. The general rules of pleadings, proving and interpreting the terms thereof apply. In **Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 SCA at [18] Wallis JA** held that *"Interpretation is the process of attributing meaning to the words used in a document, be it legislation,.., or contract, having regard to the context provided by reading the particular provision(s) in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production."* and *[26].. In most cases the court is faced with two or more possible meanings.. and in resolving the problem, the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation".*

[12] The effect of a breach of a compromise will depend on the nature of the agreement. In **Nagar v Nagar 1982 (2) SA 263 Z at 268 E** it was held that where the compromise not subject to a suspensive or resolute condition action must be brought on the compromise and there can be no returning to the original agreement.

DISCUSSION:

[13] The parties in the matter before court are *ad idem* that the compromise as embodied in the two letters is the full agreement on which must be decided. As set out in the **Edumeni (supra),** the court has to find the terms agreed to in the text of the two letters. It is clear from the second letter that the terms and conditions contained in the first letter are part and parcel of the offer but for the increased amount from R 2 200 000,00 in the first to R 2 500 000,00 in the second. This is contained in par 2.1 in the first letter increased as set out above. The second letter only increased the monetary amount payable by the respondent towards the appellant. Nothing in the second letter amends, alter or delete the contents of par 2.1 of the first letter. If, as decided above in the **Edumeni** matter, seen within the context of the two letters and the preceding meeting on 14 November 2016, it is clear that par 2.1 in the first letter is an explicit term of the settlement and was not retracted in the second letter.

[14] Giving the ordinary grammar meaning to the contents of par 2.1 in the first letter read with par 4 of the second letter, there can be no other conclusion that par 2.1 in the first letter is an integral term of the settlement agreement. The argument that it was never the intention of the parties to have additional volumes of log supplied to the appellant during December 2016 does not reflect the agreed intention of the parties and agreed term as in par 2.1 of the first letter. This is also clear from the minutes of the preceding meeting between the parties on 14 November 2016. The minutes clearly records that Harvey (Theron) on behalf of the respondent requested that

plantations produce and supply enough volume for December holidays. Contextualising the minutes and the explicit term in par 2.1 of the first letter, no other interpretation can be given that it was indeed part of the settlement that the respondent would supply additional volume log to the appellant during December 2016 and January 2017 to make good the existing undersupply of log.

[15] I cannot agree with the court *a quo* finding that the appellant failed to prove on a balance of probabilities that it was a material term of the settlement agreement that the respondent would produce and supply to the appellant 7 800 cubic meters of log during December 2016 and January 2017. I am of the view that the respondent indeed breached the settlement agreement as alleged.

[16] The issue of the value and credibility of the evidence in my view also do not impact on the outcome of the appeal. It is a question of interpretation of the agreement. The parties hold different views in this regard, but when interpreting the complete agreement, the logical and reasonable interpretation favours the appellant. The quest by the respondent to try and exclude par 2.1 in the first letter as a material term of the settlement cannot succeed. This matter is not similar to that in **Dreyer v AXZS Industries 2006 (5) SA 548 SCA at 558 C-G** and **Stellenbosch Farmers' Winery Group Ltd and Another v Martell Et Cie and Others 2003 (1) SA 11 SCA at paras [5]-[7] and [14]-[15]** to find that there are two irreconcilable versions and that the appellant's version, bearing the onus to prove, and compared with that of the

respondent, should be rejected. The interpretation of the agreement, in view of all the evidence and the minute of the meeting on 14 November 2016 read with the two letters dated 18 and 22 November 2016, favours the appellant. Despite contradicting versions on the terms of the settlement agreement, the probabilities by far favours the appellant and the appeal must succeed.

[17] Mr Madima on behalf of the respondent conceded during argument that should the court find in favour of the appellant, the quantum of the appellant's claim as calculated by the appellant in the amount of R 2 809 442,96 is not in dispute. It is therefore not necessary to dwell on the issue of quantum.

COSTS:

[17] The fees of more than one advocate are allowed on a party and party bill of costs **only** when the court makes such an order. Uniform Rule 69(2) limits the costs in respect of more than one advocate on a party and party scale and the fees of the additional advocate shall not exceed one half of those allowed in respect of the first advocate. In total the junior gets half of the senior's fee but when the junior does most of the work and the senior does no more than scan the work of the junior, the Taxing Master will look at the junior's brief to assess the proper fees. See **Taxation of Costs in the Higher and Lower Courts: A Practical Guide** by **Albert Kruger and Wilma Mostert, Lexis-Nexis par 15.5.3 page 76.** It is for the Taxing Master to assess the fees in this regard.

[18] I propose the appeal to be allowed and the order of the court *a quo* be set aside and that the following order be made:

ORDER:

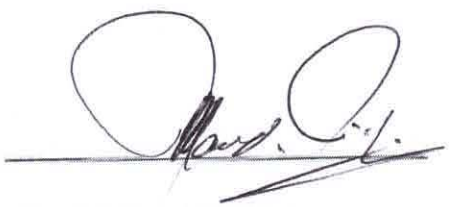
Judgment is granted in favour of the Plaintiff in the following terms:

1. The order of the court *a quo* is set aside;

2. The Respondent is to pay the Appellant the amount of R 2 809 442,96;

3. Interest *a tempore more* at the rate of 10,25% per annum calculated from 6 February 2017 to date of payment;

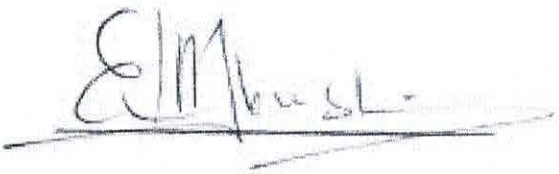
4. Cost of suit for two advocates subject to the discretion of the Taxing Master as set out in Uniform Rule 69(2).



J HOLLAND-MUTER

Acting Judge of the Pretoria High Court

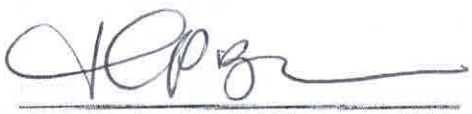
I agree and it is so ordered.



M KUBUSHI

Judge of the Pretoria High Court

I agree



T BOKAKO

Acting Judge of the Pretoria High Court

Date heard: 20 JULY 2022

Judgment: 10 August 2022

APPEARANCES:

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