

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

- (1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **NO**

Date: **27 June 2024** Signature: _____

CASE NO: 2023/030182

In the matter between:

SHEHNAAZ AHMED VALLY

APPLICANT

and

ELA ASSET MANAGEMENT
RESPONDENT

1ST

THE FINANCIAL SECTOR CONTROL BOARD
RESPONDENT

2ND

Coram: Dlamini J

Date of request for reasons: 16 February 2024

Delivered: 27 June 2024 – This judgment was handed down electronically by circulation to the parties' representatives

via email, uploaded to *CaseLines*, and released to SAFLII. The date and time for hand-down is deemed to be 10:30 on 27 June 2024.

JUDGMENT

DLAMINI J

[1] On 22 January 2024, I made an order marked “X” an order of this court, What follows hereunder are my reasons for that order.

[2] This is an application wherein the applicant seeks relief that a settlement agreement be made an order of the court and further or other ancillary relief.

[3] The facts surrounding this dispute are largely common cause and can be summarised as follows.

[4] The applicant was offered and received financial services from the first respondent who made an undertaking to invest monies on behalf of the the applicant. Around May 2022, the first respondent informed the applicant that an employee of the first respondent had unlawfully embezzled the applicant's monies which was held by the first respondent.

[5] Following discussion between the parties, a written settlement agreement was entered into between the applicant and the first respondent, in terms of which the first respondent undertook to repay the applicant's monies that were due to the applicant.

[6] According to the applicant, the first respondent has failed to make full payment to the applicant in terms of the settlement agreement, hence the applicant launched this application to make the settlement agreement an order of court alternatively.

[7] The application is opposed by the first respondent on the basis that this court has no power to grant an order making the settlement agreement an order of the court. The first respondent did not file any opposing papers.

[8] The applicant contends that prayer one (1) of the Notice of Motion is not necessary to carry the further relief for payment as contained in prayer 2 of the applicant's Notice of Motion and may be refused by a court while still finding for the applicant in the further relief sought.

[9] The high watermark of the respondent's contention is that the court has no power to make a settlement agreement an order of court where the settlement agreement was not concluded to settle any pending litigation between the parties.

[10] This court having made a finding that the settlement agreement cannot be made an order of court. However, I am of the view that the applicant has made a case to be answered by the first respondent in the alternative relief sought by the applicant. Therefore in the interest of justice and to avoid piecemeal litigation, I made an order that this matter must proceed to trial and be dealt with all at once.

[11] In light of the fact that the first respondent did not file any opposing affidavit, the first respondent is allowed to file such affidavit and the matter could be set down trial accordingly.

[12] These are my reasons for the order.

ORDER

The order marked "X" that I signed on 22 January 2024 is made an order of this court.

J DLAMINI
Judge of the High Court
Gauteng Division, Johannesburg

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