

Short Notes on:

## **Settling A Dispute In The Middle Of An Arbitration – How Is This Different From Other Procedures In Which Settlement Occurs?**

### ***Introduction***

Entering into a settlement after arbitration proceedings have commenced is not such an uncommon occurrence anymore. When a settlement is reached, the arbitrator is requested to make an award by agreement.

However, how enforceable is such an award?

### ***Bidoli v Bidoli & another (436/10) [2011] ZASCA 82 (27 May 2011)***

In *Bidoli v Bidoli & another*, the court addressed exactly this legal question. The brothers Bidoli were in business with their father in joint and separate enterprises. Their focus was on construction in Africa and Italy.

Disputes arose between the brothers, and in 2007 they turned to arbitration to settle the conflict between them. The parties appointed an arbitrator, and the arbitration commenced in December 2007. On the 7th of December 2007, the parties met outside the arbitration hearing and discussed a settlement. At the parties' request, they incorporated a settlement agreement into the arbitration award made by the arbitrator.

Guido Bidoli (one of the parties) applied to have the said arbitration award made an order of court in terms of section 31 of the Arbitration Act 42 of 1965. Romolo Bidoli opposed this application and made a counter-application that the award is declared void. He raised the argument that the arbitrator's mandate had terminated. As a result, the arbitration award was not enforceable as it is considered null and void.

The High Court ruled in favour of Romolo Bidoli. The matter went to the Supreme Court of Appeal, where the court upheld the appeal favouring Guido Bidoli. On appeal, the court commented that the arbitrator was bound by the parties that appoint him. He is entitled, after accepting this role, to hear the dispute and make an award accordingly. However, his authority as an arbitrator only ends on

the completion of the final order. Therefore, it is best practice for the arbitrator to state that the parties agree to the contents of the award. Furthermore, it is essential to note that both parties empower the arbitrator to write the award in line with the settlement.

### **Conclusion**

An arbitration award can be enforced by having the award declared an order of the appropriate court. Thus, the parties can rest assured that once they settle, the arbitration award taken by consent of the two parties will be binding and enforceable by the courts.

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