



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: 61961/2022

(1) REPORTABLE: No	
(2) OF INTEREST TO OTHER JUDGES: No	
(3) REVISED: No	
<u>22/01/2024</u>	
Date	Signature

In the matter between:

KHUTSO NAKETSI COMMUNAL PROPERTY ASSOCIATION

[Registration No: CPA/08/1142/A]

Applicant

and

KHUTSO NAKETSI AGRI (PTY) LTD

[Registration No: 20169/168181/07]

1st Respondent

HPN BESTUUR (PTY) LTD

[Registration No: 2019/168242/07]

2nd Respondent

THE MEC FOR RURAL DEVELOPMENT AND

LAND REFORM, NORTH-WEST PROVINCE

3rd Respondent

GKL AUDITORS [Practice No: 902411]

4th Respondent

JUDGMENT ON LEAVE TO APPEAL

K. STRYDOM AJ,

1. This is an application for leave to appeal, instituted by the First and Second Respondents against my judgment and order delivered on 25 May 2023.
2. To avoid confusion, I will refer to the parties as cited in the judgment. Any references to “the Respondents” relate to the First and Second Respondent, collectively.

3. In this matter a comprehensive and detailed judgment was delivered. As such I do not intend to unnecessarily revisit or restate any of the facts, reasonings or findings that are contained therein, nor will I deal with the grounds of appeal individually.
4. The Respondents seek leave to appeal against, firstly, the finding that the share transfer agreement (“STA”) was void and, secondly, against the dismissal of the Respondents’ plea of *lis pendens*.

The Share Transfer Agreement (“STA”)

Submissions by the Respondents:

5. The Respondents argue that they have a reasonable prospect of success on appeal as another Court may reasonably find that there is a material factual dispute regarding the conclusion and/or validity of the STA. The Respondents argue that, in reaching the conclusion that the STA was void for lack of authority, I incorrectly applied the *Plascon Evans* rule.
6. For the Applicant, the deponent to the founding affidavit had denied signing the STA (“the Applicant’s first version”). In the alternative, he denied that he had the requisite authority from the executive committee of the Applicant to bind the Applicant (“the Applicant’s alternative version”). In respect of the latter, he relied on a purported resolution taken by the Applicant which expressly prohibits single members from concluding such agreements on the Applicant’s behalf.
7. The Respondents are seemingly of the view that my finding on voidness was based on the Applicant’s alternative version.

“In leaving the back door open in case of a finding that he in fact did sign same, the deponent to the founding affidavit stated that only the executive committee of the CPA a by way of resolution can bind the Applicant to such a transaction. On this score the Honourable Court found that the Share Transfer Agreement is void for lack of authority”¹

8. The Respondents submit that their version (that the deponent had the requisite authority), as supported by the facts alleged in the affidavits by Pistorius Jnr, C Swart and the accounting officer, is not far-fetched and should not be rejected.
9. The submit that factual dispute exists and that “....*factual finding as to the absence of compliance with the Applicant’s constitution and the CPA act in obtaining authorization to have entered into the STA cannot be made in motion proceedings...*”²

¹ Respondent’s Heads of Argument in the Leave to appeal para 3.4; Caselines page 038-6

² Respondent’s Heads of Argument in the Leave to appeal para 5.3; Caselines page 038-9

Evaluation and finding

10. The Respondents opinion, that reliance was placed on the deponent's version (alternative or otherwise) in arriving at the conclusion that STA was void, is incorrect. To my mind, it was, in fact, the factual allegations by the deponent to the founding affidavit that were far-fetched. As such, no reliance was placed on those factual allegations at all.
11. To the contrary, as can be gleaned from paragraphs 56 to 68 of the judgment, only the facts alleged by the Applicant, as per the confirmatory affidavits, were relied upon in assessing whether the deponent to the founding affidavit had the requisite authority to sign the STA. The facts surrounding the conclusion of the STA, as alleged by the Respondents, were scrutinised against the statutory and regulatory provisions governing the authority of persons to act on behalf of a communal property association in terms of the CPA act and the Applicant's constitution.
12. Simply put, there was no dispute of fact underpinning the rationale for the decision. Even if the deponent to the founding affidavit had confirmed the facts as alleged by the Respondents, the finding would have remained the same. This is because the finding was based on whether the deponent, having signed the STA, given the the facts alleged by the Respondents, had the authority to bind the Applicant. In this regard only the Communal Property Association Act 28 of 1996 ("the CPA act") and the Applicant's constitution constituted in terms thereof were referenced. Specifically, no regard was had to the alleged resolution taken by the committee of the Applicant on the 14th of March 2018, as this was a disputed fact.
13. The Respondents, in their application for leave to appeal, initially alleged that the finding that they bore the onus to prove the validity of the conclusion of the STA, was incorrect. I did not understand them to seriously pursue this ground during argument in the leave to appeal. In any event, at the hearing of the application, this issue was specifically canvassed with the legal representatives of the Respondents, who confirmed that such an onus existed. Additionally, as indicated in the judgment, this existence of such an onus is compounded by the provisions of the CPA act which effectively ousts any reliance on, for instance, ostensible authority.
14. The voidness of the STA was therefore a legal conclusion based on the undisputed facts as alleged by the Respondents.
15. In view of the aforementioned, as well as the reasoning set out in the judgment itself, I find that the Respondents do not have a reasonable prospect of convincing another Court, on appeal, that the STA was validly concluded.

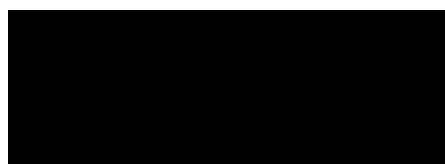
Lis pendens

16. The dismissal of the Respondents' plea of *lis pendens* was not only based on the finding that the validity of STA was not determinative of the outcome in the action proceedings, but also, alternatively, based on the exercise of my discretion.
17. Even if another Court found that the validity of the STA was, in fact, determinative in the action proceedings, the Respondents have not presented an argument indicating on what basis such a contrary finding would affect the exercise of my discretion in this regard. Nor have they indicated how another Court, on appeal, could reasonably find that such discretion was exercised capriciously.
18. In view hereof (in addition to the reasons stated in the judgment), I find that the Respondents do not have a reasonable prospect of convincing another Court on appeal that the plea of *lis pendens* should be upheld.

Order

19. I accordingly make the following order:

1. The application for leave to appeal is dismissed.
2. The first and second Respondents (the Applicants in the application for leave to appeal) are ordered to pay the costs of the Applicant (the Respondent in the application for leave to appeal)



K. STRYDOM
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing:

Date of judgment: 22 January 2023

APPEARANCES:

COUNSEL FOR APPLICANT: Adv A South SC

COUNSEL FOR 1ST AND 2ND RESPONDENTS: Adv Francois Botes SC & Adv DA DE Kock