

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 33669/2021

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☐ / No ☒

Date: 12 April 2024

WJ du Plessis

In the matter between:

FRIDAH MOSIMA MASHILO

APPLICANT

and

JOHANN RICHARD LEMMER

FIRST RESPONDENT

ANNA MARIA ELIZABETH LEMMER

SECOND RESPONDENT

JAN HENDRIK MARX

THIRD RESPONDENT

STEPHAN FOURIE ATTORNEYS

FOURTH RESPONDENT

REGISTRAR OF DEEDS, SOUTH AFRICA

FIFTH RESPONDENT

**THORNBROOK GOLF ESTATE PROPERTY
OWNERS' ASSOCIATION NPC**

SIXTH RESPONDENT

JUDGMENT

VARIATION OF JUDGMENT IN TERMS OF RULE 42(1)(b)

DU PLESSIS AJ

- [1] This is a variation of the order granted by this court on 17 November 2023 to correct a patent error or omission.
- [2] On 17 November 2023, the court delivered judgment in the matter between the Applicant, Ms Mashilo, and the first to third Respondents, where, in essence, the court stayed an eviction application (the counter application), referring the matter to trial as there is a material dispute of fact that cannot be resolved on the papers. The first to third Respondents appealed the order. During the leave to appeal process, I became aware of some errors in the judgment and the order, which need to be varied in terms of Rule 42(1)(b) of the Uniform Rules of Court to rectify the patent errors in the judgment and order.
- [3] In paragraphs three (3) and seven (7), I incorrectly referred to the first respondent as the third respondent when discussing the facts. This does not reflect the court's intention,¹ as is evident from the rest of the judgment. It also does not alter the judgment itself² and thus needs to be corrected in terms of Rule 42(1)(b). The paragraphs thus read:

[3] At the end of 2016, the first Respondent offered to assist the Applicant with construction work at the property. It was then agreed that the building costs would amount to R600 000. From here, the parties don't agree on too much.

And

¹ *Adonis v Additional Magistrate, Belville* 2007 (2) SA 147 (C) par 17.

² *Seattle v Protea Assurance Co Ltd* 1984 (2) SA 537 (C).

[7] The first to third Respondents' version is somewhat different. Its version regarding the loan and the property transfer is the following: The first Respondent started construction in February 2017 with his mother's company (second Respondent).

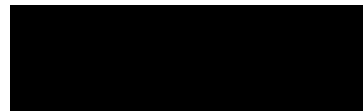
[4] In paragraph 15 of the judgment, I refer to the application withdrew her application. However, in paragraph 1 of the order I state that "the application is dismissed". Having had regard to the order, that paragraph serves no purpose as the application was withdrawn. This patent error needs to be corrected to leave no doubt as to what the order requires to be done.

[5] Accordingly, the court as a result of this varies its order by removing the first paragraph to read as set out below.

Order

[6] I, therefore, make the following order:

1. The counter-application for eviction is stayed, pending the outcome of the action in case number 87517-2023.
2. Costs in this application are to be costs in the action mentioned in 1.



WJ DU PLESSIS

Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be sent to the parties/their legal representatives by email.

Counsel for the Applicant:	Ms C Spangenberg
Instructed by:	E Champion Attorneys
Counsel for the 1 st , 2 nd and 3 rd respondent:	Ms K Fitzroy
Instructed by:	Rianie Strijdom Attorney
Date of the hearing:	05 September 2023
Date of judgment:	12 April 2024