FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 5144/2009

In the case between:-

MATILE JOSEPH DITSHEGO	1st Applicant
MAKOLOBE LIZZIE DITSHEGO	2nd Applicant
THE NATIONAL CREDIT REGULATOR	3rd Applicant

and

BRUSSON FINANCE (PTY) LTD	1st Respondent
AMANDA BOSHOFF	2nd Respondent
ABSA BANK LIMITED	3rd Respondent
THE REGISTRAR OF DEEDS	4th Respondent

JUDGMENT BY: JORDAAN, J

HEARD ON: 10 JUNE 2010

DELIVERED ON: 22 JULY 2010

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[1] The first and second applicants are a married couple, married in community of property. The third applicant is the National Credit Regulator. The first respondent Brusson Finance (Pty) Ltd will also be referred to as Brusson whilst the second respondent Amanda Boshoff will also be referred to as the

investor. The third respondent is Absa Bank Limited in its capacity as bondholder on the property herein later referred too. The fourth respondent is the Registrar of Deeds in his official capacity.

BACKGROUND

[2] The first and second applicants owned a home in Dobsonville Gardens, Soweto wherein they stayed. They had cash-flow problems to the extent that they stood to loose their car, which they bought by means of an instalment sale agreement, because they failed to pay certain instalments on the said car. They were in need of a loan but were overextended to the effect that they could not obtain such, from recognised financial institutions, being “black listed”. They required approximately R40 000,00 to pay off the amount owing on the said car.

[3] Their home was the only security they had, valued at ±R260 000,00 but bonded to the amount of ±R93 000,00 in respect of which they paid monthly instalments of approximately R1 200,00.

[4] During March 2007 they saw an advertisement of the first respondent in a newspaper which invites home owners in need of finance to contact the first respondent for help, regardless of whether they have a good or bad credit rating. The advertisement invites such home owners to contact the first respondent if they need money for "a holiday, their business, restructuring of their finances, more available cash each month or consolidation of their debt".

THE TRANSACTIONS

[5] According to the (mainly undisputed) evidence of the first applicant he called the first respondent and spoke to one Jabu, a consultant employed by Brusson. He informed Jabu that he is a home owner of a home to the value of ±R260 000,00 subject to a bond of some R94 000,00. He gave her the details regarding the property as requested as well as his personal details which Jabu needed to establish the value of the property as well as the outstanding balance of the bond. He informed

Jabu that the applicants needed a loan of approximately R40 000,00.

[6] Some two days later Jabu telephoned the first applicant and indicated that the value of the property according to Brusson is ±R270 000,00, that Brusson would pay approximately ±R102 000,00 to Absa Bank, the third respondent, so as to cancel the bond and that the balance of R168 000,00 would be paid to the applicants. The applicants were elated.

[7] The applicants thereafter received certain documentation from Brusson consisting of a quotation and certain agreements. These did not accord with Jabu's previous assurances as a consequence whereof the first applicant phoned Jabu who reassured him that "nothing has changed" and that applicants will receive an amount of R168 000,00. As the applicants told her that they do not want to sell their house, Jabu informed the first applicant that they are not doing that but that their house will only serve as security for the loan. Based on these assurances, applicants signed four documents consisting of:

a. Blank offer to purchase signed on the 2nd of April 2007 by the applicants and on the 30th of April 2007 by the investor;

b. A blank Deed of Sale also signed by the applicants on the 2nd of April 2007;

c. A memorandum of understanding between applicants and Brusson signed on the 5th of April 2007; and

d. Memorandum of agreement between the applicant, Brusson and the investor.

[8] The applicants later came to know that the money paid to cancel their existing bond came from the R168 000,00 and not in addition thereto as they thought initially. Sometime later the applicants received an amount of R24 109,53 that was paid into their bank account.

The agreements annexed to the supporting affidavits show the following:

[9] **THE OFFER TO PURCHASE;**

This agreement records that the applicants are the sellers and the second respondent is the purchaser of the above-mentioned property. The purchase price is recorded as R168 000,00 to be financed by a bond for the full purchase price to be obtained by the purchaser.

Of particular interest is the following:

1. Occupation of the property is given, on transfer, to the sellers, namely the applicants who has to pay an amount of R2 827,12 per month as occupational interest.
2. The Seller undertakes to pay all transfer costs and appoint Brusson to administer and pay such costs on its behalf.
3. The seller pays Brusson an amount of R5 000,00 as administration fees and for facilitating the agreement.

[10] **THE DEED OF SALE**

This document records the second respondent as seller and the applicants as purchasers of the same aforesaid property for a purchase price of R210 000,00 payable in minimum instalments

of R2 827,12 for a period of 24 months bearing interest at a rate coupled to the prime rate, (which at that stage was 12,5%) of 16,15%. It records that the minimum instalment as aforesaid represents interest on the purchase price only and not capital redemption. The seller (second respondent) undertakes to pay to Brusson an amount of R42 000,00 on transfer of the property to the purchasers, after which Brusson undertakes to refund an amount equal to 15% of that to the seller, that is an amount of R6 300,00. All payments to be made by the purchasers are to be made to Brusson as appointed agent for the seller. The document further records that the purchasers are already in occupation of the property. The purchasers are liable to pay taxes, levies, services, water and electricity, which must be paid to Brusson who shall pay it over to the relevant creditors. The purchasers are also liable for transfer and related costs. In terms of the agreement a copy of any notice given by either party to the other shall also be sent to Brusson. Clauses 8 and 9 of the agreement deals with the seller's rights in the event of breach by the purchaser. During the term of the agreement the seller or Brusson is entitled to enter the property for inspection

or repairs. Furthermore, the seller shall keep the property insured but the purchaser shall be liable to pay the insurance premiums, which payments must be made to Brusson. If the purchaser fails to pay the premiums, the seller is obliged to invoke clauses 8 and 9 as aforesaid. Brusson shall take out and maintain a life insurance policy on the life of the seller. If such policy reduces or settles the bond, such amount becomes a claim in favour of Brusson against the seller's estate and the executor of the estate shall be obliged to sell the property to Brusson at the same price that the seller originally bought it for and on the same terms and conditions. On the death of the seller, the executor shall cede the deed of sale to Brusson.

[11] **MEMORANDUM OF AGREEMENT**

This is a document evidencing an agreement between Brusson, the investor as the first party and applicants as the second party. (The name of the first party is not noted on the copy annexed to the affidavit.) This document records that:

1. Brusson will manage the agreement and all financial issues relating thereto. It defines the first agreement as

the agreement of sale by the applicants to the first party, namely the investor, and the second agreement as the instalment sale agreement in terms of which the applicants repurchased the property from the investor. The second party (applicants) acknowledge that they are totally not creditworthy and that Brusson incurred huge financial risks in standing surety for the second party's obligations as set out in the agreement and the applicants agree that payment be made to Brusson as set out in the agreement. It further records that, if applicants fail to pay the monthly bond instalments or rates and taxes as well as levies, Brusson guarantees the obligations of the investor to ensure that the bond instalments, rates, etc. is paid, so that the investor is not prejudiced in any manner. Brusson is bound as surety and co-principal debtor in favour of the investor for such payments in terms of the second agreement. If the applicants default in terms of the second agreement and the investor becomes entitled to cancellation of the said agreement, the investor "shall elect" to cancel the second agreement in which event the

investor shall sell the property to Brusson for the same price as in the first agreement and on the same terms and conditions, as well as effect transfer to Brusson. The first party (the investor) authorises Brusson to sign all the necessary documents to effect such sale and transfer on the investors behalf to Brusson. The agreement further records that the first party shall sign the necessary power of attorney for purposes of the aforesaid, at the time he signs the documents to effect transfer to himself in terms of the first agreement. After the second party (the applicants) has defaulted and pending registration of transfer to Brusson, the latter will maintain the bond instalments and pay the rates, taxes and levies to limit the risk to the investor. The applicants are not entitled to sell, assign or make over their rights or obligations or sell the right to claim transfer without prior written consent of Brusson, who is entitled to impose conditions to such consent. The document further records that this document together with annexure “O” (the first purchase by the investor) and annexure “I” (the repurchase by the

applicants) contain the entire agreement between the parties.

[12] **MEMORANDUM OF UNDERSTANDING**

This document is entered into between Brusson and the second party in terms of the memorandum of agreement (the applicants). It records that, out of the proceeds of the initial agreement of sale from the applicants to the investor the transfer and related costs plus an amount of R5 000,00 towards future rates and taxes plus attorneys fees for cancellation of the initial bond plus an amount of R1 000,00 to cover the cost of the first of two property valuations will be deductable from such proceeds. A second valuation of the property shall be done and, should the cost thereof together with the costs of the first valuation exceeds R1 000,00, the excess shall also be deducted from the proceeds of the initial sale. If the client (applicants) commits any breach of the agreements entered into and thereby causes cancellation of the initial sale, then, in addition to other lawful claims of the aggrieved parties, the

applicants shall be liable to pay R5 000,00 plus VAT as portion of liquidated damages immediately.

[13] It should be noted that the first agreement was signed by both parties thereto, whilst the copy of the second (repurchase) agreement, annexed to the papers, does not contain the signature of the seller/investor or a signature on behalf of Brusson. The memorandum of agreement does not contain the name of the investor as first party or the signatures of the first party or Brusson. The first and second respondents however do not take issue with the allegation that those were in fact the agreements concluded, but rely on other defences including some technical objections to the said annexures, without denying the existence of such agreements.

APPLICANT'S CASE

[14] The applicants contend that the agreements are inter related to such an extend that not one can be regarded as a separate independent agreement but indeed form one individual transaction. They also alleged that the whole tenor and effect

of the transaction comprises of a loan against the property as security (a so-called “reverse mortgage”) entitling Brusson as the effective credit grantor to, in the event of default by the applicants, obtain transfer and ownership of the property without any reference to the amount of the loan in proportion to the value of the property. Applicants allege that, in so doing, the transaction amounts to an illegal and void *pactum commissorium*. What is more, in as far as Brusson in effect is enabled to obtain ownership and the right to sell the property for its own account, the transaction also amounts to an illegal and void form of *parate executi*. The applicants also allege that the transaction falls foul of the National Credit Act in that Brusson qualifies as a credit grantor in terms of the said act, is and was not registered as such, with the result that the agreement is unlawful and void in terms of section 40(4) of the National Credit Act read with section 89(2)(d) thereof. It is in this last respect that the third applicant, the regulator, makes common cause with the other applicants.

[15] Only the first and second respondents opposed the application.

FIRST AND SECOND RESPONDENTS' CASE ON THE PAPERS

[16] The respondents' contend:

a. that the regulator not only does not have *locus standi* but is precluded from joining in the application by reason of the stipulation contained in section 15(a) of the National Credit Act, 34 of 2005.

b. Brusson only assists people in dire financial circumstances to obtain finance from investors who actually provide such finance.

c. No proper copies of the alleged agreements were annexed to the founding affidavit and the respondents deny that the copies of the agreements annexed constitute true copies thereof and therefore contend that the applicants failed to establish the agreements they seek to impugn.

d. Respondents allege that the transaction is in effect a pawn transaction and therefore falls outside the ambit of the National Credit Act, specifically section 89 thereof.

e. The true purpose and intention of the parties cannot be determined on the papers and a substantial dispute of fact therefore exists, as a result of which the applicants should fail in their application.

f. The respondents are not credit providers and need not be registered under the National Credit Act. Especially Brusson does not provide loans itself.

APPLICATION TO STRIKE OUT

[17] The respondents brought an application for striking out certain portions of the founding affidavits, as been scandalous, vexatious, hearsay, irrelevant and/or argumentative. In argument however, the application as far as it refers to a large portion of the application, consisting of the affidavits of officials of the Credit Regulator, was abandoned and the rest not persisted with but not abandoned. I am not persuaded that any of the concerned portions should be struck out. The respondents never tried to show which portions were to be struck out on the ground of either being scandalous or vexatious, etc. but were content to generalise its objections in

regard to all. Although some allegations obviously were argumentative or consisted of deduction of conclusions from the alleged facts, it served the purpose of notifying the respondents exactly what the applicants' case would be and rather than prejudicing the respondents, it was to their advantage to be informed as to what the applicants' case and arguments will be. **THE STRIKING-OUT APPLICATION SHOULD BE AND IS DISMISSED WITH COSTS.**

THE OPPOSING AFFIDAVIT

[18] The opposing affidavits on behalf of the respondents consist mainly of bare denials or avoiding the issues by relying on technical points or vague dissent. For example:

a. It is alleged that the agreements annexed to the application are not proper copies and respondents deny that they are true copies. The respondents' attitude is that they do not accept that they (the agreements) are correct or complete. The respondents however do not annexe the supposedly correct copies.

b. The respondents' contend that the reliance by applicants on representations made by Jabu is "disingenuously" and "very conveniently" since she is no longer employed by Brusson. The respondents however do not deny that she did work for Brusson and nowhere state that her affidavit can not be obtained by respondents.

c. The allegations to the effect that Jabu sent documentation to the applicants for signature (which included the agreements aforesaid) are met by a blunt (and incorrect) statement that such documentation have not been annexed and in the absence of having had "cite" (sic) of same, respondents are unable to respond thereto.

d. The allegations by the applicants that Brusson is the credit provider under at least a hundred credit agreements and should therefore have registered as a provider in terms of the National Credit Act are met by a bare denial.

e. The allegation of the applicants that, in terms of the agreements, the ownership in the property will eventually either rest in applicants, or in event of their default, in

Brusson, is met with the response that the applicants failed to establish on what basis the property might allegedly eventually be owned by Brusson.

RESPONDENTS' ARGUMENT

[20] In argument the defence to the effect that the transactions amounted to a pawn transaction which is excluded from the application of the National Credit Act was, wisely, not pressed in argument by Mr Van Niewenhuizen on behalf of the respondents. It was mainly contended that:

a. It is perfectly permissible for parties to enter into separate agreements, which for practical and commercial reasons, are linked and inter dependant. That does not mean that an inference of reciprocity of the obligations undertaken in the different agreements is necessarily to be made. (See **WYNNS CAR CARE PRODUCTS v FIRST NATIONAL INDUSTRIAL BANK LIMITED** 1991 (2) SA 754 (AD) at 758 A – D.) Although, in the present matter, there might justifiably be inferred some reciprocity between some of the agreements, it cannot be said of all of them. The

applicants' stance that the real intention of the parties should be inferred from reading the different agreements as one inter related transaction is therefore untenable.

b. The allegations made by applicants on the papers as a whole do not amount to sufficient evidence of the real intention of all the parties, in particular the intentions of Brusson and the investor. Any finding in that regard can only be made after a full investigation of the evidence of all the parties in the form of a trial and the matter should therefore be referred to trial.

c. The allegations by applicants as to being misled and/or defrauded do not go far enough and are not substantiated by sufficient proof.

d. Brusson is nothing more than a broker and therefore not a credit provider as envisaged by the National Credit Act. Only the re-sale agreement might qualify as a credit agreement and not all four of the agreements. Brusson is not a party to the re-sale agreement.

e. Where both parties to an invalid agreement have performed in full and thereby achieved their intended

purpose, there is no room for restitution. (The so-called rule in **WILKEN v KOHLER** 1913 AD 135 as confirmed in **LEGATOR McKENNA v SHEA AND OTHERS** 2010 (1) SA 35 (SCA)).

f. The only appropriate remedy for the applicants should be the *condictio ob turpem wel iniustam causa*. Applicants did not make out a case for such relief, and in particular the amount of enrichment, if any.

DISCUSSION

[21] The agreements:

a. Apart from the fact that the memorandum of agreement between all the parties explicitly states that the entire agreement between the parties consists of such memorandum together with the purchase agreement and the re-sale agreement, I have no doubt that the agreements are so interrelated and interdependent that it forms one transaction. The obligations conferred by the different agreements are clearly reciprocal. The purchase by the investor would not have taken place in the absence

of the repurchase agreement. It is abundantly clear that applicants never intended to sell their property without an immediate re-sale to them. It is even more probable that they never intended to actually sell their property at all. Their allegations in this regard are not seriously contradicted. It is furthermore substantiated by Brusson's own documents; "THE CLIENT PROCEDURE INFORMATION SHEET" refers to property of clients as security and informs prospective clients that, although a sale and re-sale takes place, all the property rights remain with the client. In the "procedure diagram" the following are stated:

> "1. The client/home owner temporarily transfers their property to a Brusson investor and in return receives the financial relief they applied for.
> 2. The Brusson investor applies for a mortgage loan through a financial institution (indicated as A) to cover the costs on this initial transaction, thus making the funds available for the client. The financial institution debits Brusson (indicated as B) and Brusson debits the client. Brusson

guarantees the monthly instalment to the financial institution.

3. The Brusson investor immediately sells back the property to the client using a "sale by instalment" agreement, allowing the client to retain ownership of his home. On fulfilment of the "sale by instalment" agreement the client transfers back his property into his name."

The said information sheet goes on to state that the client has the right to sell the property to a third party at any time, subject to covering the outstanding balance due on the re-purchase agreement. It also refers to such property as "collateral" for the loan. What is more, the respondents themselves described the transaction as a pawn transaction.

[22] From the terms of the memorandum of agreement it is also clear that it forms an integral part of the whole transaction. It not only appoints Brusson as the administrator of all the finances involved in the other agreements but Brusson becomes a surety and co-principle debtor in favour of the investor. It furthermore compels the investor to, on default of

applicant's obligations, cancel the repurchase agreement and sell the property to Brusson at no profit but for the same price and on the same terms as the investor bought it from the applicants. It also limits the applicants' right to sell or make over their rights or obligations under the re-purchase agreement by requiring the consent of Brusson who is entitled to impose its own conditions if such consent is given at all.

[23] The memorandum of understanding might be regarded as a separate agreement, but that does not affect the ultimate result in any way.

THE ESSENCE AND NATURE OF THE TRANSACTION

[24] "The true enquiry in a matter such as this is to establish whether the real nature and the implementation of these particular contracts is (sic) consistent with their ostensible form. In pursuit of that enquiry one must strive to ascertain, from all the relevant circumstances, the actual meaning of the contracting parties. It therefore becomes necessary to examine in greater detail the agreements in question and the manner in which they were implemented."

See **MAIZE BOARD v JACKSON** 2005 (6) SA 592 (SCA) at 596, para [8].

I have already alluded to the particular terms of the agreements *supra*. Some peculiar features are notable:

[25] In terms of the first agreement the investor does not pay transfer costs as is usual. It is paid by the seller. The purchaser does not take occupation of the property but the seller does.

[26] In terms of the second agreement (the re-purchase agreement) the following are notable:

In the event that transfer is given to the applicants as purchaser, the seller has to pay an amount R42 000,00 to Brusson, who is not a party thereto but the investor is entitled to a refund of 15% thereof. Payments are not made to the seller but to Brusson. Taxes, etc. is to be paid by the purchaser but not to the relevant creditors and indeed to Brusson. Any notices exchanged between the parties should also go to Brusson. Brusson is entitled to enter the property for inspection

and/or repairs. The seller shall insure the premises, but the purchaser is liable for the insurance premiums. In the event of default by the purchaser, the seller is obliged to invoke clauses 8 and 9 relating to cancellation, etc. Brusson takes out life insurance on the life of the seller. In the event of the seller's death, the executor is obliged to sell the property to Brusson at the same price that the seller originally bought it from. The deed of sale shall be ceded to Brusson.

[27] In terms of the memorandum of agreement Brusson manages the agreements and finances on behalf of the parties to the aforesaid agreements. Brusson becomes a surety and co-principle debtor in favour of the investor and also guarantees the obligations of the investor. On default by the purchasers in terms of the re-sale agreement, the seller (investor) is obliged to cancel the agreement and sell the property to Brusson. At the time the sale and re-sale agreements are entered into, the investor has to sign a power of attorney in favour of Brusson, entitling the latter to effect transfer itself.

[28] All these features are strange and foreign to usual and *bona fide* agreements of sale of immovable property. Seen in conjunction with Brusson's own "client procedure information sheet" *supra*, it becomes clear that;

a. the investor does not really intend buying the property and never takes occupation thereof;

b. the client (applicants) does not really intend selling the property and do not loose occupation thereof;

c. the investor pays nothing and stands to loose nothing if anything goes wrong;

d. the applicants sell the house for far less than the market value and immediately buys it back for R42 000,00 more;

e. the R42 000,00 does not accrue to the investor but to Brusson except 15% thereof;

f. Brusson arranges everything, receives and pays whatever is received or has to be paid;

g. In the event of default by the applicants, Brusson ends up as owner of the property to the value of more than the initial outlay of R168 000,00, of which part, in any event, accrues to Brusson as fees, etc.

The aforesaid leads to only one reasonable conclusion, namely that the real intention was and is that the applicants are obtaining a loan from Brusson against the security of their property. The agreements are nothing but simulated transactions. From the aforesaid it is clear that Brusson, in partnership or association with so-called investors, lends money to borrowers. Brusson guarantees the obligations of the parties to the different agreements and in effect bears the eventual risk of default on the part of the borrower. In return, Brusson has effective control of the whole transaction and, in the event of default, it becomes entitled to obtain and retain ownership of the property. The whole scheme amounts to nothing less than an unlawful *pactum commissorium*.

Brusson's role is far more than only being a broker. It actively runs a scheme by which credit is granted to consumers. The applicants' allegations that it does so in more than a hundred such agreements are not gainsaid in any acceptable way but rather avoided by the respondents. It must therefore be

accepted. Once that is so, Brusson has to be registered in terms of the National Credit Act. It is common cause that it was and is not so registered. The agreements are therefore unlawful in terms of section 40(4) of the said act and void.

[29] Although section 89 of the act was not in force at the time, its provisions as to unlawfulness and voidability are incorporated in section 40(4) of the act, which section was in force when the agreements were entered into. The transaction is therefore void in terms of the National Credit Act as well. Whether the further consequences provided for in section 89(5) also find application is not necessary to decide and I refrain from doing that, safe to mention that, in view of the fact that section 89 was not in force at the time (apart from the provisions of unlawfulness and voidability which are in any event covered by section 40(4)), I am of the *prima facie* view that the prescribed consequences provided for in section 89(5) do not apply retrospectively. I do not know of any common law rule or statutory provisions to the same or similar effect and non were quoted to me (as required in schedule 3, section 4(2)).

[30] I have already found that the agreements are unlawful and void. The rule in **WILKEN v KOHLER** (*supra*) does not apply to transactions prohibited by law. See **LEGATOR McKENNA v SHEA AND OTHERS** *(supra)* at page 47 para [29].

***LOCUS STANDI* OF THIRD APPLICANT**

[31] The reliance by respondents on section 15(a) is misconceived. The said subsection only deals with cases of informal resolution of disputes arising in terms of the act. Mr Kemp on behalf of the applicants correctly pointed out that, if section 15(a) applied to the act as a whole, section 87(2) would have been superfluous. The National Credit Regulator has a real and sufficient interest in compliance with the act. Nothing in the act prohibits the regulator from approaching the court for a declarator to the effect that certain agreements are contrary to the act and therefore unlawful.

THE RELIEF CLAIMED

[32] The applicants pray for orders declaring the aforesaid agreements unlawful and void and, in effect, for restitution by transferring the ownership in the property to the applicants free of the third respondents' present registered bond, subject to repayment by the applicants to the respondents of all monies received by the applicants in terms of the transaction.

[33] What the applicants received is the amount advanced and paid into their account of R24 109,53 as well as the amount of the original bond that was paid. The amount of that bond appears to have been R93 135,00 at that stage. On behalf of the applicants it was also conceded that the amount of R5 000,00 for rates and taxes deducted from the original purchase price was used to their advantage. On behalf of the applicants the amount of the original bond was rounded off to R94 000,00 for purposes of the calculation of what they received. That brings the total amount of what they received to the amount of R123 109,53. Because of the instalments that the applicants have paid for a time as well as the transfer costs, etc. that they have paid, the applicants were indeed worse off than the above

figure reflects but did not ask for any adjustment to that figure to be made for purposes of the orders requested.

[34] The applicants are entitled to restitution. That can be achieved by either ordering the respondents to effect transfer of the property to applicants against simultaneous payment by applicants of the amount of R123 109,53, or by ordering the respondents to effect transfer to the applicants subject to the existing bond held by third respondent, reduced to an amount of R123 109,53 (the difference to be paid by respondents). For the latter, the co-operation of third respondent is required and might not be obtained. Restitution in this sense amounts to just that, namely simple restitution, and is not dependent on proof of enrichment of respondents, as argued on behalf of the respondents. The applicants must simply be restored in their original position.

[35] The following orders are granted:

1. It is declared that the agreements entered into by applicants and respondents as set out in prayer 1 of the notice of motion, are unlawful and void.

2. First and second respondents are ordered, jointly and severally, to:

2.1 (a) reduce the outstanding amount of the existing bond held by third respondent to an amount not exceeding R123 109,53.

(b) take all steps and sign all documents necessary to effect transfer of the property known as erf 249, Dobsonville Gardens, Gauteng Province, subject to the existing bond, reduced as set out in 2.1(a), to applicants within two months from date of this order.

In the alternative to 2.1 and if the consent of the third respondent cannot be obtained to effect transfer of the existing bond, reduced as aforesaid, within one month from date of this order;

2.2 Take all steps and sign all documents necessary to effect transfer of the aforesaid property, free from the existing bond, to applicants within two months from date of this order, against payment by applicants to the first respondent of

an amount of R123 109,53, payment of which to be effected at date of transfer and guaranteed by a recognised financial institution, which guarantee shall be delivered to first respondents' attorneys of record at least two weeks prior to the date of transfer.

3. First and second respondents are ordered, jointly and severally, to pay all transfer and related costs, including transfer duty, pertaining to the transfers in terms of paragraphs 2.1(b) or 2.2 above.

4. First and second respondents are, jointly and severally, the one paying the other to be absolved, ordered to pay the costs of the application, including the costs occasioned by the employment of two counsel.

5. In the event that respondents fail or refuse to effect transfer as set out in 2.1 or 2.2 above:

5.1 The Registrar of this Court is authorised and ordered to sign all documents and take such steps as are necessary to effect transfer of the aforesaid property, subject to the existing bond, to applicants.

5.2 Applicants are granted leave to approach this Court on the same papers, duly amplified, for judgment in the amount representing the difference between the amount of the existing bond and the amount of R123 108,53 as well as the amounts pertaining to the expenses incurred in regard to par. 3 above.

A. F. JORDAAN, J

On behalf of the applicant:	Adv. K. J. Kemp SC with: S. Grobler Instructed by: Honey Attorneys BLOEMFONTEIN
On behalf of the respondent:	Adv. S. van Nieuwenhuizen SC with: Adv. G. Clarke Instructed by: Callis Attorneys BLOEMFONTEIN

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