

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

Case No. **909/2014**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED

DATE: 12 JULY 2024

SIGNATURE

In the matter between:

BONDEV MIDRAND (PTY) LTD

Applicant

and

CHRISTINA MARIA SYBELLA VAN BLERK

First Respondent

THE REGISTRAR OF DEEDS

Second Respondent

STANDARD BANK OF SOUTH AFRICA

Third Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be 12 July 2024.

JUDGMENT

RETIEF J

INTRODUCTION

[1] The applicant, Bondev Midrand (Pty) Ltd [Bondev], is the developer of a township known as M[...] Estate. Bondev seeks to give effect to a reversionary condition [condition B] contained in a deed of transfer T34938/2012 [the title deed]. In particular, Bondev seeks to exercise a right of retransfer of a property described as Erf 1[...], M[...] Estate 19, Township, Registration Division JR, Gauteng [the property]. In terms of the title deed, the first respondent [Van Blerk] is described as having purchased the property on 22 February 2011 from Pandowe Property Investments CC (in liquidation) [Pandowe].

[2] Bondev launched this application on 7 April 2014, more than a decade ago, as a result of which the facts and the procedural steps taken have overtaken the relief sought. Factually, soon after this application was launched, Bondev obtained judgment by default and effected the very retransfer of the property from Van Blerk, which it now seeks. On the facts, the property was transferred from Van Blerk by the Sheriff into Bondev's name by virtue of deed of transfer T91317/2014.

[3] Although the default judgment giving effect to the retransfer right was set aside, Van Blerk did not take retransfer of the property pending the outcome of this application nor, were the financial consequences dealt with. The property is still registered in Bondev's name. In effect it appears that Bondev seeks the relief to re-establish its ownership and to give credence to the factual position as it presently stands. It does this without amending the existing prayers notwithstanding that some prayers may have become superfluous. It rather, and in the alternative, now seeks restitution in the event that its retransfer relief fails. Van Blerk by way of a counterclaim seeks to enforce her ownership, to *inter alia* by claiming the retransfer of the property and the cancellation of condition B.

[4] Van Blerk raises prescription as against Bondev's right to claim retransfer and Bondev, in the alternative, raises a lien defence as security for the payment of a claim for enrichment which may arise.

[5] The Court papers are littered with competing issues as each party scrambled to control the outcome. In an attempt to resolve the issues this Court first considers the material common cause facts and the procedural steps taken by both parties.

COMMON CAUSE FACTS AND RELEVANT PROCEDURAL STEPS

[6] On 18 August 2005, Mr and Mrs Barkhuizen [the Barkhuizens] signed an offer to purchase the property from Bondev for the sum of R390 000.00 in terms of a written agreement [original sale agreement].

[7] Clause 11 of the original sale agreement provided the following:

“The PURCHASER undertakes to erect buildings on the PROPERTY to the reasonable satisfaction of the SELLER within EIGHTEEN (18) months of the date of proclamation, failing which the SELLER shall be entitled (but not obliged), to claim that the PROPERTY be re-transferred to the SELLER at the cost of the PURCHASER against repayment of the original purchase price to the PURCHASER, interest free.”

[8] The power of attorney for transfer of the property from Bondev to the Barkhuizens provided that the transfer was subject to a number of conditions. Condition A was imposed by Bondev and condition B(a), B(b) imposed in favour of the Midfield Home Owner’s Association. In the power of attorney, condition A stated:

“A Subject to the following condition imposed and enforceable by Bondev Midrand (Pty) Ltd (2000/027600). (The Transferor), namely: the Transferee, his successor in title or assigns are obliged to erect a dwelling unit on the property within 18 (eighteen) months from the 28th of June 2006, failing which the Transferor shall be entitled, but not obliged, to claim that the property be transferred to the Transferee at the cost of the Transferee against payment of the original purchase,

interest free. The Transferee shall not be entitled to sell or transfer the property during the aforesaid period without the written approval of the Transferor. The period may be extended at the discretion of the developer.”

[9] For clarity sake, condition A described above is in fact condition B as it appears in the title deed, the subject matter of this application. Back to the chronology, the power of attorney to give transfer also recorded that Chris Smith, a director of Bondev, sold the property to the Barkhuizens on 28 June 2006.

[10] The Township was proclaimed on 28 June 2006 and expiration of the 18 (eighteen) months period [the period] catered for in the title deed lapsed on 27 December 2007.

[11] Before the expiry of the period contained in condition B, and on 25 August 2006, the Barkhuizens sold the property to Pandowe for the sum of R420 000.00. The title deed T10900/2006 contained all the same conditions, including condition B.

[12] On 3 June 2008, Pandowe concluded a building extension agreement with Bondev [extension agreement 1]. Extension agreement 1 recorded that Pandowe had to complete construction within 10 (ten) months from 3 June 2008.

[13] Pandowe did not erect a dwelling on the property according to extension agreement 1 and subsequently went into liquidation.

[14] In November 2010, Van Blerk signed an offer to purchase the property from the joint liquidators of Pandowe for the sum of R310 000.00.

[15] Clause 8.1 of the offer to purchase stated that Van Blerk bought the property voetstoots and “*subject to all conditions, servitudes, current or forthcoming land claims, legal or illegal occupants and/or expropriation applicable to the property.*”

[16] Clause 11 of the offer to purchase signed by Van Blerk deals with Value Added Tax and does not accord with the terms of clause 11 in the the original agreement with the Barkhuizens.

[17] On 1 November 2011, Bondev and Van Blerk concluded a building extension agreement [extension agreement 2] in which she undertook to complete the construction of a dwelling within 12 (twelve) months.

[18] On 22 May 2012, Van Blerk took transfer of the property and the title deed recorded conditions A, B and C as was recorded in title deed T10900/2006 in favour of Pandowe.

[19] On 18 September 2013, Bondev addressed a letter to Van Blerk reminding her of clause 11 of the original agreement and appealing to her to comply, confirming that her building period had lapsed and stated that “*Bondev has not waived its rights and will enforce it if necessary.*” They appealed to her to commence development on her property without delay.

[20] On the 14 October 2013, Bondev’s attorney sent a letter per registered post confirming Bondev’s right to retransfer without further extensions to Van Blerk, this time relying on the matter of the Supreme Court of Appeal matter [SCA] of Lodhi 2 Properties Vs Bondev Developments (Pty) Ltd¹ and condition B stating from paragraph 4 that: “

“4. *In terms of the condition you had to commence with building and erection of a dwelling on the property within the stipulated period (18 (eighteen) months from the 28 June 2006-own emphasis) failing which Bondev would be entitled to re-transfer the property at the original purchase price.*

¹ **Lodhi 2 Properties Vs Bondev Developments (Pty) Ltd** 2007 (6) SA 67 (SCA).

5. *We confirm that our client forwarded various letters of demand to yourselves to submit building plans and to commence with the erection of buildings on the property.*
6. *Notwithstanding various demands, no buildings have to date been erected on the property and our clients are therefore entitled to retransfer of the property at the original purchase price interest free to our client.”*

[21] On 7 April 2014, Bondev launched this application. In its founding papers Bondev relied on condition B together with the terms of extension agreement 2, contending that its retransfer right arose on 2 November 2012. Thus, relying on Van Blerk's failure to erect a dwelling within 12 (twelve) months from the date extension agreement 2 was concluded.

[22] Bondev obtained judgment by default on 14 May 2014. Van Blerk launched her rescission application to set aside the judgment by default on 13 October 2014.

[23] Despite the pending rescission application and despite the terms of the default order before Louw J that Van Blerk should take the necessary steps to retransfer the property and bear the costs associated therewith against the payment of the sum of the original purchase price of R390 000.00, Bondev took the steps, Bondev paid for all the transfer costs and settled the outstanding bond with the third respondent [Standard Bank]. The property was re-registered into Bondev's name on 17 November 2014 by virtue of deed of transfer T91317/2014.

[24] The mortgage bond B[...] in favour of Standard Bank, was cancelled and an amount (ostensibly the balance of the purchase price) was deposited into Van Blerk's attorney's trust account.

[25] On 17 August 2015, the judgment by default was rescinded, setting aside of the order of 14 May 2014 and no direction sought nor granted for the retransfer or for the repayment of the purchase price and costs paid by Bondev. The order,

other than setting aside the retransfer order, ordered Van Blerk to file her answering affidavit within 15 (fifteen) days of the order. Van Blerk failed to do so.

[26] Van Blerk seeks condonation for the late filing of her answering affidavit which Bondev does not oppose.

[27] In January 2021, Bondev effected the alternative relief in which it, *inter alia*, prayed for the restitution of the amounts to include the purchase price, transfer costs, levies, and rates in the aggregate sum of R753 147.95.

ISSUES TO BE DETERMINED

[28] Whether Bondev can enforce a right to claim retransfer of the property. Alternatively, whether it possesses a claim for enrichment and can exercise a lien over the property pending the payment of R753 147.95, alternatively an amount determined by this Court.

[29] Whether Van Blerk can enforce her vindicatory right in respect of the property and cancel condition B.

[30] To deal with the determinable issues the aspect of prescription must be dealt with first. In that way, the necessity to deal with the remaining issue/s will be revealed.

PRESCRIPTION

[31] In essence, Van Blerk's attorney argues that Bondev's right to retransfer was a personal right and that the claim constituted a debt.² In consequence, he contended that Section 11(d) of the Prescription Act, 68 of 1969 [Prescription Act] applies to the facts. Applying the 3 (three) years period to the facts, Van Blerk contends that Bondev's claim prescribed on 26 December 2010, a date prior to this application being launched.

² **Bondev Midrand (Pty) v Puling** (802/2016); **Bondev Midrand (Pty) v Ramokgopa** (803/2016) [2017] ZASCA 141 (2 October 2017), para [13] and [19].

[32] To expand, the attorney argued that the prescription date, even if the extension agreement 2 is taken into consideration, does not affect the prescription argument in that, the extension agreement 2 is not capable of extending the prescriptive period. This is so because at the time Van Blerk signed the extension agreement 2, Bondev's right to claim retransfer had already prescribed.

[33] The point of departure between the parties irrespective arguments was the effect of the extension agreements. Bondev argues that the extension agreement 1 concluded with Pandowe occurred on 3 June 2008, was within the prescriptive period, thereby extending its right to claim retransfer to 2 April 2009. The 3 (three) year prescriptive period, absent a further extension should then lapse on 1 April 2012. The extension agreement 2 which was concluded on 1 November 2011 with Van Blerk too, was concluded within the prescriptive extended period, thereby extending Bondev's right to claim retransfer to 31 October 2012. Bondev's claim prescribes on 30 October 2015. This application launched prior thereto.

[34] In short, Van Blerk contends the right to claim retransfer prescribed on 27 December 2010 and Bondev on 30 October 2015.

Is the retransfer right in condition B a real or personal right?

[35] The nature of the retransfer right has been settled by the SCA in the Bondev matter³. The SCA was clear that the condition before it, which is similar to condition B, consisted of two distinct clauses. The clause dealing with the landowner's obligation to erect a dwelling, in light of the Willow Waters Home Association (Pty) Ltd v Koka N.O.,⁴ [Willow Waters matter] gave rise to a real right and that the second clause, containing the retransfer right was akin to providing the landowner with an option to purchase which, is essentially a personal right.⁵ It is on this basis that Van Blerk argued that the retransfer claim was a debt and as such has prescribed. Moving from that premise is a claim for retransfer a debt?

³ Ibid.

⁴ [2014] ZASCA 220; 2015 (5) SA 304 (SCA) at par [16].

⁵ *Supra* footnote 2 at para 1 [3-15], [19].

Is the claim of retransfer “debt”?

[36] The term “debt” as accepted by the Constitutional Court [CC] in the Makate v Vodacom Limited⁶ [Makate matter], is an obligation to pay money or to deliver goods or to render service, and is included under the definition and would prescribe within 3 (three) years under the Prescription Act.⁷ Paragraph 85 states:

“In Escom the Appellate Division said that the word “debt” in the Prescription Act should be the meaning ascribed to it in the Shorter Oxford English Dictionary, namely:

‘1. Something owed or due: something (as money, goods or service) which one person is under an obligation to pay or render to another. 2. A liability or obligation to pay or render something; the condition of being so obligated.’”

[37] It appears that Froneman J sitting in the Constitutional Court [CC] may have settled the “*precise boundaries of the husk left by the Makate axe*” in the matter of eThekweni Municipality v Mounthaven (Pty) Ltd,⁸ [eThekweni matter] by explaining that ‘goods’ consist of property, movable or immovable and that the latter was transferred by the registration of transfer in the Deeds Office. Furthermore, that the concept of ‘a debt’, was “*A claim to transfer immovable property in the name of another is thus a claim to perform an obligation to deliver goods in the form of immovable property. It is a ‘debt’ in the dictionary sense accepted in Makate.*”⁹ Bondev’s claim for the retransfer of the immovable property in terms of condition B, is therefore ‘a debt’ and is to be dealt with in terms of Section 11 of Chapter III of the Prescription Act.

⁶ **Makate v Vodacom Limited** [2016] ZACC 13; 2016 (4) SA 121 (CC); 2016 (6) BCLR 709 (CC).

⁷ *Ibid.* At par 83 and 85.

⁸ **eThekweni Municipality v Mount Haven (Pty) Ltd** [2018] ZACC 43 at par 8.

⁹ *Ibid.*

[38] Both parties arguments were premised on a prescriptive period of 3 (three) years. On that basis, Bondev's right to claim retransfer of the property begins to run on the date by when the title deed reflected a dwelling had to be erected. It is common cause that the date is 27 December 2007 and, absent an applicable extension thereof, such claim would be extinguished on 26 December 2010 [within the prescriptive period].

[39] Applying this premise to the common cause facts, Mr and Mrs Barkhuizen transferred the property with condition B to Pandowe on 25 August 2006, within the prescriptive period.

[40] Logically the period of 18 (eighteen) months from 28 June 2006 can only be extended prior to its own expiration on the 27 December 2007. Logically, for want of a period to extend.

[41] The extension agreement 1, although concluded on 3 June 2008 within the prescriptive period, was concluded after 27 December 2007. Thus, the period for extension had already lapsed. Notwithstanding, Bondev in terms of condition B still had until 26 December 2010 to enforce its retransfer claim against Pandowe.

[42] Therefore, the extension agreement 2 which Van Blerk signed on 1 November 2011, at a time when she was not the landowner of the property yet, did not extend Bondev's right to retransfer as its claim had already prescribed on 26 December 2010. It flows then that on 22 May 2012, when the property was registered into Van Blerk's name, Bondev right had prescribed.

[43] Significantly, Bondev in its letter to Van Blerk on 18 September 2013 did not mention the extension agreement 2 nor rely on condition B, but clause 11 of the original agreement it concluded with the Barkhuizens.

[44] Furthermore, Bondev's own attorney failed to rely on the terms of extension agreement 2 when it attempted to establish Bondev's retransfer right in their letter of October 2014. The extension agreement 2 could not possibly have had any effect on the condition B in that, she only took ownership some 6 (six) months after

the conclusion of extension agreement 2 and as mention the period for extension had expired.

[45] It is only now, in this application, that Bondev attempts to rely on both condition B and extension agreement 2. It does so by pleading that Bondev's right to retransfer arose on 2 November 2012. However this does not assist Bondev.

[46] In the premises, Bondev's right to claim retransfer has prescribed.

BONDEV'S CLAIM FOR RESTITUTION

[47] On 17 August 2015, when the default judgment was set aside, Bondev was no longer regarded as the owner of the property albeit that the property was registered in Bondev's name. Now, by way of a counterclaim Van Blerk seeks to rectify the position by enforcing her vindicatory claim and effecting such by way of the cancellation of the deed of title in favour of Bondev in terms of Section 6 of the Deeds Registries Act, 1937, alternatively, the retransfer of the property at the cost of Bondev. Van Blerk does not tender the transfer costs.

[48] In January 2021, Bondev effected an amendment of its prayers as:

- "8. In the alternative to the above, the first respondent be ordered to pay the sum of R753 147.95, or such amount as the above Honourable Court may determine (own emphasis), against transfer to her of the property referred to in prayer 1 above.*
- 9. The first respondent shall present to the applicant a bank guarantee for payment of the aforesaid amount within 60 days from date of the order, failing which the applicant shall retain the aforesaid property."*

[49] In support of the amendment, Bondev filed a supplementary affidavit in which it set out the basis of its alternate relief by stating:

“Absent restitution, the first respondent will be enriched in this amount at the applicant’s expense (own emphasis). The amount referred to was the alleged arrear levies which were due to the Homeowners Association of Midfield Estate in the sum of R14 052.00 which Bondev paid to the Homeowners Association to obtain transfer as well as an amount of R13 338.33 in respect of arrear rates and taxes which Bondev paid to the local authority in respect of the property including the payment of the purchase price in the amount of R390 000.00” [collectively “transfer expenses”].

[50] Over and above the transfer expenses Bondev claims post-transfer expenses from 17 November 2014 to just prior to the rescission order, in amounts for levies of R95 929.50 and for rates and taxes an amount of R93 894.85 [collectively “post transfer expenses”].

[51] Bondev seeks to enforce a lien as security for the payment of the amount of “R753 147.95, or such amount as the above Honourable Court may determine”. The lien, on the facts, can only be an enrichment lien. It is trite that an enrichment lien as security can be enforced by a *bona fide* possessor provided there is an existing enrichment claim,¹⁰ which on the papers only arises on failure of the re-transfer relief. An enrichment lien does not exist in a vacuum.

[52] Van Blerk has failed to deal with the facts raised in support of the elements giving rise to Bondev’s enrichment claim nor for that matter its entitlement to exercise a lien. Van Blerk simply states that she is not liable for the levies and rates when she was not the owner of the property. Other than admitting that ‘an amount’ was paid into her attorney’s trust account she does not deal with the payment made to her Standard Bank loan debt and simply makes a generalised statement that she has been advised that “no ‘Constitutional Court judgment’, or for that matter any other judgments in our law in support of the applicant’s contention regarding restitution.” This general statement is not quite fully understood but, in argument her attorney contended that Bondev has failed to

¹⁰ **Brooklyn House Furnishers (Pty) Ltd v Knoetze & Sons** 1970 (3) All SA 332 (A) at 275B; **Singh v Santam Insurance** [1996] ZASCA 92, 1997 (1) SA 291 (A) at 297 D-E.

make out a case for restitution because it did not specifically plead the necessary allegations as suggested by Harms in *Amlers*.¹¹ No specific reference in *Amlers* was made in support of this argument.

[53] However, Bondev's claim for restitution is based on enrichment arise as a result of its inability to claim the retransfer of the property. Alternatively it appears it argues for equity compensation to be determined by this Court. In argument, the latter claim was not been dealt nor expanded by Bondev. This Court too is not sitting as an Equality Court to grant compensation on that basis. However, in support of the argument that that an enrichment claim flows from the facts and that a Court will not order re-transfer unless there is a claim for restitution Bondev referred this Court to the SCA matter of Menqa and Another v Markom,¹² [Menqa matter]. In the Menqa matter the SCA considered a just and equitable order in terms of Section 172(1)(b) of the Constitution in circumstances when the court *a quo*, directing retransfer of a property consequent upon a finding of a null and void sale in execution, failed to deal with the financial consequences of such re-transfer, reasoned that:

“25. *It follows that, in the present case, the registration of the property in Menqa's name did not make him owner of the property. Theoretically, therefore, Markom is entitled to recover the property in vindicatory proceedings. However, simply to direct the Registrar of Deeds to re-register the property in Markom's name would not, in my view, properly take into account the fact that Menqa has paid more than R140 000 in respect of the property and that, by virtue of the extinction of Markom's bond debt to Nedbank (and, at least while the default judgment in Tromp's favour stands, by virtue of the partial payment of Markom's judgment debt to Tromp), Markom appears to have been unjustifiably enriched at Menqa's expense. It will be much fairer to both parties if these claims are dealt with, preferably simultaneously, in future proceedings which will no doubt be instituted in due course. Neither Markom nor Menqa requires the*

¹¹ Amler's Precedents of Pleadings.

¹² **Menqa and Another v Markom and Others** 2008 (2) SA 120 (SCA) at par [25].

leave of any court to institute such proceedings. For these reasons, the confirmation by the court a quo of paragraph 1.4 of the rule nisi should be set aside.”

[54] Accepting for a moment that Bondev’s reliance on equity arises from section 172 of the Constitution as in the Menqa matter, then it is to be stated that the equity consideration by the SCA in the matter was triggered by the powers provided by section 172 of the Constitution in that the determinable issues before it were of a constitutional nature. This is not the case in this matter. However, what the Menqu matter illustrates is that on similar facts, enrichment is foreseeable and, that there is a need for the parties to deal with the financial consequences provided they make out a case. This would explain the reason for the alternate relief and as such, this Court now considers whether sufficient allegations are made to sustain a claim.

[55] Van Blerk does not deny that Bondev took transfer of the property against the payment of R 390 000.00. This fact too is clear *ex facie* the title deed T91317/2014. However, she is silent on the remaining material facts. From the evidence it is clear that Bondev will be impoverished if retransfer is ordered without restitution of the money it has spent. That such payments were made at the expense of Bondev flows. This however is said with an element of caution in that not all of the expenses claimed were spent *sine causa*.

[56] The transfer costs paid by Bondev, although a necessity for transfer at the time, were not expenses they had to make by Court order. An unjustifiable expense paid by them in order to obtain transfer as soon as possible notwithstanding the risk of the pending rescission application. The Court order clearly stating that the transfer expenses to be paid by Van Blerk.

[57] This Court too, is in agreement with Van Blerk that the post transfer expenses claimed at a time should not be for her expense. This is because Bondev was regarded as the owner of the property prior to the date of the rescission order. Bondev does not deal with the consequences nor relies on the effect of the rescission order. The effect thereof is that only those amounts spent

and claimed without legal ground (*sine causa*) constitutes an entitlement to a claim for enrichment. Bondev does not claim expenses incurred from the rescission order to date.

[58] On the papers an enrichment claim has been established. In the absence of Van Blerk dealing with the lien the Court determines the issue on Bondev's papers. Bondev obtained possession of the property by Court order which sanctioned the delivery thereof. The possession at the time was *bona fide* albeit that it could have been disturbed. Bondev's possession was not disturbed by the rescission order only its claim of ownership as retransfer was not ordered nor claimed. In fact, Van Blerk never claimed delivery of the property pending the outcome of this application and allowed Bondev to remain in such possession from 2014 until now. Possession has been retained with Van Blerk's knowledge and, Bondev's *bona fides* of remaining in such possession pending the finalisation of the retransfer thereof has never been challenged. Bondev is therefore in *bona fide* possession of the property until cancellation of the title deed or until retransfer of the property occurs. In consequence, an enrichment lien established.

VAN BLERK'S CLAIM FOR THE CANCELLATION OF CONDITION B

[59] Van Blerk in her papers fails to establish a basis or ground in law,¹³ absent consent, upon which she seeks cancellation of condition B. No statutory provision is provided invoking nor argued upon which the second respondent, the Registrar of Deeds, should act. Nor is there any evidence that as a result of Judicial sanction, no imposition will be caused to other holders of property in the same proclaimed Township. On what basis can such an imposition be justified? The answer is left wanting.

[60] Absent too, argument that no real rights contained in condition B will not be affected by the cancellation of condition B. Van Blerk has not established grounds for this relief.

¹³ ***Ex Parte Millsite Investment Co (Pty) Ltd*** 1965 (2) SA 582 (T) SA at para 584E-585A.

[61] This prayer must fail.

COSTS

[62] Costs are in the discretion of the Court. Costs generally follow the result. The result in this matter is to be determined by having regard to all the circumstances and procedural steps taken by both parties. Although Bondev is successful with its alternative relief, such relief was triggered by their own decision to effect a retransfer right knowing full well that a rescission application was pending. They were the authors of their own necessity for the alternate relief. Furthermore the necessity for the alternative relief is because Van Blerk's counter application and prescription objection was successful. In consequence, this Court award the costs to Van Blerk.

[63] Furthermore, this Court notes that the costs in the rescission application were reserved. It is prudent to deal with such costs too and this Court finds that the costs should follow the result and in consequence awards the costs to Van Blerk.

[64] The following order:

1. The First Respondent is granted condonation for the late filing of her answering affidavit;
2. The First Respondent is ordered to pay the Applicant the amount of R390 000.00.
3. On fulfilment of prayer 2 hereof, the Second Respondent is authorised and ordered in terms of section 6 of the Deeds Registries Act 47 of 1937 to cancel the title deed T91317/14 held over Erf 1[...] M[...] Estate Extension 19 Township, Registration Division J.R., Province Gauteng, registered in the name of the Applicant to revive T34938/2012.

4. The costs associated with such cancellation referred to in prayer 3 to be paid by the Applicant.
5. The Applicant is liable to pay the First Respondent's part and party costs of this application inclusive of the costs in the application for rescission, on scale B.

**L.A. RETIEF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

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