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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 5378/2024

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE 10 APRIL 2025 SIGNATURE.....	

In the matter between:

MPOIKANA ALFRED MAIFALA

1ST APPLICANT

MILLICENT TSAKANI MAIFALA

2ND APPLICANT

-and-

PETER RAIPHEHLI RAMASHAPA

1ST RESPONDENT

MMAKAMA SARA RAMASHAPA

2ND RESPONDENT

MMONE PHILLIP LEDWABA

3RD RESPONDENT

Delivered : **10 April 2025**

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **10 April 2025** at **10:00 am**.

Date heard : **4 April 2025**

Coram : **Bresler AJ**

JUDGMENT

BRESLER AJ:

Introduction:

[1] The First and Second Applicant (the 'Applicants') apply for the sale agreement concluded between the First and Second Respondents as sellers, and the Third Respondent as purchaser, in respect of Erf 7[...] Seshego-E, Limpopo Province (the 'Property') to be declared null and void *ab initio*, and for the transfer of the Property to the Third Respondent, pursuant to the sale agreement to be set aside.

[2] The application is opposed by the First, Second and Third Respondents.

Factual synopsis:

[3] The Applicants' case is the following:

- 3.1 On or about the 5th of February 2019 a Sale agreement was concluded between the First and Second Respondents as sellers and the Applicants as purchasers. The full purchase price was consequently paid upon signature of the Sale agreement.
- 3.2 In terms of the said Sale agreement the Property was sold to the Applicants for a purchase price of R80,000 (eighty thousand rand). The Applicants were entitled to occupy the property pending transfer thereof.
- 3.3 The Applicants commenced with the construction of a house on the Property and also furnished the house.
- 3.4 On or about the 22nd of January 2024, the First Applicant was informed that unknown individuals were in the process of demolishing their house. Upon arrival at the Property, he did not find anybody present but did observe the structure being partially demolished.
- 3.5 An urgent application was launched in the Seshego Magistrates Court restraining the Third Respondent *inter alia* from demolishing the house or building on or developing the Property pending finalisation of the current proceedings.
- 3.6 During argument, this Court was informed that the Magistrate's Court's order was extended by agreement pending the outcome of the current application.
- 3.7 The Applicants submit that the Sale agreement concluded between the Applicants and the First and Second Respondents was concluded first, which renders the Sale agreement between the First and Second Respondents as sellers and the Third Respondent as purchaser void.

[4] The First and Second Respondents version is the following:

- 4.1 They admit that a Sale agreement was concluded between themselves and the Applicants. They furthermore admit that the purchase price in the amount of R80,000.00 was paid. Subsequent hereto it transpired that the Applicants were unable to pay the transfer costs.
- 4.2 The First and Second Respondent consequently agreed that the transfer costs be paid out of the purchase price that was retained on trust by their attorney.
- 4.3 After payment of the transfer costs and approximately in March 2019, J.E. Risiva Attorneys, who were appointed as the conveyancers, informed the parties that the clearance figures need to be paid by the Applicants. The Applicants failed to pay the clearance figures.
- 4.4 Hereafter the Applicants failed to take any further steps to have the property registered in their names.
- 4.5 As the First and Second Respondents found the property vacant and dilapidated, and were unable to reach the Applicants telephonically, they mandated estate agents to market the property.
- 4.6 According to the First and Second Respondents the Applicants then repeatedly failed to pay the Municipal consumption account resulting in a considerable arrear amount being owed to the Municipality. They also submit that the Applicants abandoned the Property during or about 2020.
- 4.7 The First and Second Respondents endeavoured to settle the matter with the Applicants but was unsuccessful. An amount of R60,000 was repaid to the Applicants during or about 2024.

4.8 The First and Second Respondent therefore denies that the Applicants are entitled to the relief.

[5] The Third Respondent's version is the following:

5.1 The Third Respondent pleads that the Applicants' claim has prescribed. According to the Third Respondent, the Applicants' claim is a personal right that accrued upon conclusion of the Agreement. They did not enforce the personal right, resulting in the personal right to claim transfer, prescribing.

5.2 The Third Respondent also submits that the Applicants failed to disclose all material facts to the court, alternatively failed to act in good faith. The issues pertaining to the non-payment of transfer costs, the arrear municipal account and the settlement amount paid to the Applicants were not disclosed in their Founding affidavit.

5.3 It is furthermore the case of the Third Respondent that the Applicants should have been aware that a material dispute of fact exists and that action proceedings should have been issued. In this regard, reference to the opposed Magistrate's Court proceedings is relevant as the factual dispute was already known to all the parties at that stage.

5.4 It is not disputed by the Third Respondent that he entered into a sale agreement with the First and Second Respondents. The Third Respondent persists in its view that his Sale agreement is valid and enforceable, resulting in the subsequent transfer being valid.

[6] It is clearly common cause between the parties that transfer was affected in the name of the Third Respondent pursuant to a sale agreement that superseded the sale agreement on which the Applicants rely.

[7] In reply to the First and Second Respondents' answering affidavit the Applicants state that they were not responsible for payment of the rates and taxes associated with the transfer. The demand was therefore not met. The Applicants persist in their claim that the First and Second Respondents have no right to sell the property to other people after selling it to the Applicants and prior to cancellation or termination of the sale agreement. They also reiterate that they did not accept R60,000.00 (sixty thousand rand) as full and final settlement of the matter.

[8] In reply to the Third Respondents answering affidavit, the issue of prescription is denied, and the Applicants persist with the version that the second Sale agreement should be set aside in favour of first Sale agreement.

[9] When the proceedings in court commenced, this Court requested the parties to address it specifically on two issues:

9.1 Prescription; and

9.2 Factual dispute

Issues that require determination:

[10] In this Court's view, of critical importance is to determine if the claim of the Applicants has prescribed. Prescription will bring about an end to the current proceedings rendering a determination of the remaining issues unnecessary.

[11] Insofar as it may have an impact on the proceedings, this Court is furthermore called upon to determine if there was a foreseeable factual dispute, rendering the application proceedings unsuitable to resolve the said dispute.

The Applicable Legal Principles:

[12] The law pertaining to prescription of a debt, was extensively dealt with by numerous courts in the past. It has now become established law that a claim to transfer immovable property is a personal right subject to the three-year time limit contemplated in the **Prescription Act**, Act 68 of 1969.

[13] Section 11(d) of the **Prescription Act** provides:

‘11 Period of prescription

...

(d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.

[14] The relevance of prescription has been said to be:

‘The Prescription Act deals with prescription in general. In terms of s 10(a) debt is extinguished by prescription after the lapse of a period which applied in respect of the prescription of the debt. A claim is thus after a period of time no longer actionable and justiciable. It is a deadline which, if not met, could deny a plaintiff access to a court in respect of a specific claim.’¹

[15] In **Radebe v Government of the Republic of South Africa and Others**², Booysen J stated:

‘The effect of the expropriation, whether valid or not, is that the applicant has been deprived of ownership of the land. He was thus left with no more than a personal right (if he has any right at all) to claim redelivery of the land by registration of title in his name. Such a claim constitutes a debt within the meaning of s 10 and 11 of the Prescription Act 68 of 1969. While “debt” is not defined in the Act, it has to be given a wide and general meaning. (HMBMP Properties (Pty)Ltd v King 1981 (1) SA 906 (N) at 909A-B). There

¹ **Road Accident Fund v Mdeyide** 2011 (2) SA 26 (CC)

² 1995 (3) SA 787 (N) at 804 A – C

is no reason why a claim for vindication of property, movable or immovable should not be included. (Joubert (ed) The Law of South Africa vol 21 para 96.)

- [16] The case of **Desai NO v Desai and Others**³ specifically dealt with the obligation of a party to procure registration of transfer of interests in an immovable property. The following was stated:

'For the reasons which follow I am of the opinion that the appellant's 'debt', ie the obligation to procure registration of transfer in terms of clause 13(d), was indeed extinguished by prescription. Seeing that this finding is decisive of the case, it is unnecessary to consider the other aspects raised in argument, including the submissions relating to the true nature of the agreement and the applicability of s 1(1) of Act 71 of 1969.

*Section 10(1) of the Prescription Act 68 of 1969 ('the Act') lays down that a 'debt' shall be extinguished after the lapse of the relevant prescriptive period, which in the instant case was three years (see s 11(d)). The term 'debt' is not defined in the Act, but in the context of s 10(1) it has a wide and general meaning, and includes an obligation to do something or refrain from doing something. (See *Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A) at 344F-G; *Oertel en Andere NNO v Direkteur van Plaaslike Bestuur en Andere J* 1983 (1) SA 354 (A) at 370B.) It follows that the undertaking in clause 13(d) to procure registration of transfer was a 'debt' as envisaged in s 10(1).*

...

*Section 12(1) of the Act provides that 'prescription shall commence to run as soon as the debt is due'. This Court held in *Deloitte Haskins & Sells C Consultants (Pty) Ltd v Bowthorpe Hellerman Deutsch (Pty) Ltd* 1991 (1) SA 525 (A) at 532H that for prescription to commence running*

³ 1996 (1) SA 141 (A) at 146

'there has to be a debt immediately claimable by the creditor or, stated in another way, that there has to be a debt in respect of which the debtor is under an obligation to perform immediately'.

(See also Benson and Another v Walters and Others 1984 (1) SA 73 (A) at 82B-E.)

[17] And further:⁴

'I have difficulty in understanding how the appellant's contractual obligation could suddenly have revived, by way of implied term or otherwise, many years after the alleged performance thereof. My main problem with the respondents' argument, however, is their interpretation of clause 13(d), and more particularly their construction of the nature of the debt owed in terms thereof. Clause 13(d) may not have been very happily worded, but it is reasonably clear in my judgment that it placed an obligation on the appellant to 'procure registration of transfer' of certain immovable properties. The obligation was to pass transfer and not merely to sign and deliver documents. Although clause 13(d) provided that registration of transfer had to be effected at the respondents' expense by their conveyancers, the appellant was the only person who could authorise the passing of transfer.'

[18] Premised on the aforesaid, it is clear that the obligation to pass transfer existed at the time when the purchase price was duly paid by the Applicants and the First and Second Respondent therefore had a duty to pass transfer to the Applicants in return. During argument, Counsel for the Applicants submitted that the obligation to transfer only existed when all the terms of the agreement has been met. This approach is evidently incorrect and is rejected in line with the quoted authorities.

⁴ At 148

- [19] Prescription started running from the point where transfer was due. Prescription was not interrupted since approximately August 2020, when the First Respondent contacted the First Applicant and asked him to expedite the transfer. It appears in any event that this interaction is in dispute. The Applicants did not present any evidence to court to justify a conclusion that prescription was effectively interrupted to date.
- [20] Be that as it may, if prescription began running anew from this date, it has not yet been interrupted as no action has been instituted, and a period of more than 3 (three) years has prescribed. By the time the communications took place during or about 2024, and when the amount of R60,000.00 was repaid, the claim had already prescribed and could therefore not be revived.
- [21] The point *in limine* regarding prescription therefore stands to be upheld. As the issue of prescription has a final and definitive consequence for the application, this Court does not see the need to deal with any other aspect.
- [22] I find it appropriate however to remark on the existence of a foreseeable factual dispute.
- [23] As mentioned herein before, the Applicants knew that the interactions and communications pertaining to the transfer of the property was in dispute. This is just one of numerous disputes raised in the papers before court. The Applicants knew, alternatively, could have reasonably foreseen these disputes considering the pending proceedings in the Magistrate's Court. For reasons unknown to this Court, the Applicants elected to launch application proceedings.
- [24] Counsel for the Applicants argued that the said disputes does not constitute 'factual disputes' but rather a determination of the legal position. This Court does not agree. It is trite law that, in interpreting the terms of an agreement, the Court must consider the context within which the agreement was concluded. From the facts before Court, it is clear that the Applicants and the First and Second

Respondents were not *ad idem* in their understanding of their commitments in terms of the agreement. Oral testimony is thus necessary to determine these disputes. This was within the contemplation of the Applicants.

[25] Rule 6(5) of the Uniform Rules of Court provides:

'Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.'

[26] In **National Director of Public Prosecutions v Zuma**⁵ the Supreme Court of Appeal stated:

'[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities.'

[27] In the well-known decision of **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd**⁶ it was stated:

'[The] affidavits reveal certain disputes of fact. The appellant nevertheless sought a final interdict together with ancillary relief, on the papers and without resort to oral evidence. In such a case the general rule was stated

⁵ 2009 (2) SA 277 (SCA) at [26]

⁶ 1984 (3) SA 623 (A) at 634E – 635D

by Van Wyk J (with whom De Villiers JP and Rosenow J concurred) in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235E – G, to be:

“... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the fact in the applicant's affidavits justify such an order ... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted.”

[28] A failure to heed this basic proposition can (and generally should) result in the application being refused when the disputes of fact on material issues were foreseeable.⁷

[29] The foreseeable dispute of fact relates to material issues. The discussion pursuant to the conclusion of the agreement, the occupation of the property contrary to the agreement, the improvements erected on the property, the responsibilities of the parties pertaining to municipal consumption charges, the alleged breach of the agreement and the conduct of Applicants and the First and Second Respondents since the conclusion of the first Sale agreement, are all essentially in dispute to the extent that this Court is not in a position to grant final relief.

[30] On this basis also, the Application stands to be dismissed.

Costs:

[31] There is no reason why the cost order should not follow the outcome of the proceedings. Having regard to the complexity of the matter, the nature of the

⁷ BR Southwood, **Essential Judicial Reasoning**, Lexis Nexis on p 23

issues raised and the importance of the matter to the parties, this Court is satisfied that costs to counsel on Scale B is warranted.

Order:

[32] In the result the following order is made:

32.1 The application is dismissed.

32.2 The Applicants, jointly and severally, are ordered to pay the costs of the First, Second and Third Respondents including costs to counsel on Scale B.

M BRESLER AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

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POLOKWANE HIGH COURT