IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

CASE NUMBER: 1248/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 27/03/2025

SIGNATURE

PORTIA SITHOLE	**APPLICANT**
and	
MPUMELELO GLAD MESHACK NGWENYA	**FIRST RESPONDENT**
THE SHERIFF OF THE HIGH COURT MBOMBELA	**SECOND RESPONDENT**
SA HOME LOANS	**THIRD RESPONDENT**
VILJOEN AND WELLS ATTORNEYS	**FOURTH RESPONDENT**
THE REGISTRAR OF DEEDS, MPUMALANGA	**FIFTH RESPONDENT**

JUDGMENT

Shai AJ

Introduction

[1] This is an application brought on an urgent basis by the applicant.

[2] The applicant seeks for a relief, inter alia, in the following terms:

2.1 That the first respondent be ordered to sign all documentation within 48 hours after the granting of this order, necessary to ensure the registration of the transaction and transfer of the property into the applicant's name in the office of the fifth respondent and to enable the fourth respondent to proceed with the lodging of the papers to effect the transfer of the property into the name of the applicant by the fifth respondent.

[3] the application is opposed by the first respondent.

History of the litigation

[4] The applicant entered into a sale agreement with the first respondent on 29 October 2023, in terms whereof the first respondent sold to the applicant and the applicant bought from the first respondent an immovable property situated at [...] K[...] Street, Sunset View, Stonehenge Extension 1, Nelspruit.

[5] According to the sale agreement, read with its addendum, the parties agreed as follows:

5.1 The applicant will take occupation of the property on 1 February 2024, after the loan has been approved.

5.2 The occupational rent would be R12 500-00 per month.

5.3 The risk in respect of damage and/or destruction of the property would pass to the purchaser on the date of registration of transfer.

5.4 The purchaser would be responsible for all water and electricity usage from date of occupation until date of registration, payable directly to the seller.

[6] Pursuant to the terms of the agreement: -

6.1 The applicant obtained approval for her loan on 3 November 2023. The loan was conditional on the applicant selling her existing immovable property. She duly complied with this condition.

6.2 Guarantees were issued on 15 January 2024.

6.3 The applicant paid the agreed rental of R12 500, and duly paid for water and electricity.

[7] First respondent encountered the following problems:

7.1 His SPLUMA application was rejected on 18 January 2024 as there was an alleged encroachment on the property of his neighbour;

7.2 Applicant was a co-owner of the property with his divorced wife and had to transfer the 50% of his divorced wife’s share into his name before transfer into the applicant’s name could take place

[8] The registration and/or transfer of the property was delayed by the problems mentioned in 6 above.

[9] By 15 January 2025 the issues mentioned in 7 above had been resolved.

[10] Applicant, however, refused to sign documents necessary to effect transfer. On 24 February 2025, the first respondent in a WhatsApp message, gave a reason for his refusal. The reason for his refusal was that the agreement was signed two years earlier and had, therefore, lapsed. He went further to state that the value of the house had appreciated.

[11] Meanwhile, during the delay, the applicant had taken occupation of the property on 1 February 2024 and had been paying the occupational rent of R12 500-00 ever since.

[12] The first respondent defaulted on water payment and the municipality cut off water supply to the premises. The respondent had to pay an extra R10 000 for supply to be reconnected. This is the amount that is specifically mentioned in the relief sought by the applicant, as the respondent was not entitled to it.

[13] The relationship between the applicant and the first respondent deteriorated and was made worse when the first respondent threatened the applicant with eviction.

[14] Tings came to a head when it was established that there was a foreclosure process related to the property and summons was already issued. This was confirmed by attorneys of the third respondent on 6 March 2025.

[15] From all the messages sent by the first respondent to the applicant it is clear that the first respondent is not willing to sign documents necessary for transfer and/or register the property in the applicant's name.

[16] Apparently the first respondent wants to resile from the contract.

<u>Issues</u>

[17] The issues for determination herein are:

17.1 Whether the matter is urgent; and

17.2 If urgent, is the respondent entitled to the relief as claimed.

<u>Urgency</u>

[18] A litigant that approaches the court for relief on an urgent basis must comply with Uniform rule 6(12)(b), which provides as follows:

"(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances under which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress in due course."

[19] This rule allows the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress. The matter will be urgent if the applicant can demonstrate, with facts, that the applicant requires immediate assistance from the court, and that if his application is not heard on an urgent basis that any order he might later be granted will by then no longer be capable of providing him with the legal protection he requires.

[20] A determination on urgency precedes a finding on merits. This means that before a court makes a finding on the merits of an urgent application, the court must

first consider whether the application is indeed so urgent that it must be dealt with on the urgent roll. Should an applicant not succeed in convincing the court that he will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll. This enables the applicant to set the matter down again on proper notice and compliance (see *SARS v Hawker Air Services (Pty) Ltd*[1]*).* Where the facts indicate that the urgency is self-created, the application will, likewise, be struck from the roll.

[21] The correct and crucial test to be applied in urgent applications is whether or not an applicant will be afforded substantial redress in due course[2].This is determined by asking whether if the matter were to follow its normal course as laid down by the rules, an applicant will be afforded substantial redress. If they cannot be afforded substantial redress in due course, the matter should be enrolled and heard on an urgent basis.

[22] If there is a delay in instituting the proceedings, an applicant has to explain the reasons for the delay and why despite the delay they claim that they cannot be afforded substantial redress at a hearing in due course.

[23] The fact that the applicant wants to have the matter resolved urgently does not render the matter urgent. The urgency of a matter depends on the relief sought seen in context with the facts of a case. This calls for courts to determine urgency on a case-by-case, context specific basis.

[24] It is this determination of urgency within a given context which renders the factual matrix of a case relevant in determining its urgency. The factual matrix should at no stage be confused with merits determination. The factual matrix is an intertwined blend of facts and circumstances that determine legal outcome. It refers to the context and circumstances underlying the controversy. Merits of a case are the important facts and reasons that help determine the outcome of a case. It is the quality of being particularly good or worthy, especially so as to deserve praise or

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[1] [2006] ZASCA 5;2006(4) SA 292 (SCA)
[2] East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite Pty Ltd and Others (11/33767[2011] ZAGPJHC 196 (23 September 2011)

reward. The factual matrix is an adaptable tool that can be used at any stages of the litigation.

[25] The court could therefore consider the factual matrix for purposes of determining urgency, without making a decision on the merits, that is, without rewarding or punishing any of the parties.

[26] *In casu*, the applicant and the first respondent had concluded an agreement. It is not argued that the agreement is invalid. The applicant had all along been performing in accordance with the terms of the agreement.

[27] It has been brought to the attention of the applicant that the property for which she paid the purchase price is about to be foreclosed. This will render her homeless. Had the first respondent not refused to sign the documents, the property could have been transferred to the applicant. The applicant is, therefore, enjoined to act swiftly in order to remedy the wrong or infringement.

[28] I am thus satisfied that the applicant acted with the urgency called upon by the circumstances of this case.

<u>The law</u>

[29] Our law of contract is governed by the *pacta sunt servanda* principle, which means that agreements must be kept or honoured. It is a fundamental principle of international law stating that treaties and contracts are binding on the parties that entered into them, and they must be performed in good faith. Thus, the pivots of the South African law of contract, are good faith, freedom of contract, sanctity of contract and privity of contract.

[30] Parties are to observe and perform in terms of their agreement and should only be allowed to deviate therefrom if it can be demonstrated that the contract is tainted with fraud or a particular clause in the agreement is unreasonable and/or so prejudicial to a party that it is against public policy.

[31] The Constitutional Court in *Beadica 231 CC and Others v Trustees for the Time Being of Oregon Trust and Others*[3] emphasized the principle of *pacta sunt servanda* and stated the following:

"*[84] Moreover, contractual relations are the bedrock of economic activity and our economic development is dependent, to a large extent, on the willingness of parties to enter into contractual relationships. If parties are confident that contracts that they enter into will be upheld, then they will be incentivised to contract with other parties for their mutual gain. Without this confidence, the very motivation for social coordination is diminished. It is indeed crucial to economic development that individuals should be able to trust that all contracting parties will be bound by obligations willingly assumed.*

[85] The fulfilment of many of the rights promises made by our Constitution depends on sound and continued economic development of our country. Certainty in contractual relations fosters a fertile environment for the advancement of constitutional rights. The protection of the sanctity of contracts is thus essential to the achievement of the constitutional vision of our society. Indeed, our constitutional project will be imperilled if courts denude the principle of pacta sunt servanda."

[32] The Court in *Wells v South African Alumenite Company*[4] held as follows:

"*If there is one thing which, more than another, public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred and enforced by the courts of justice."*

[33] The decision in Wells was quoted with approval in *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd*[5] wherein the Supreme Court of Appeal, reaffirming the principle of the privity and sanctity of the contract, stated the following:

"*[23] The privity and sanctity of contract entails that contractual obligations must be honoured when the parties have entered into the contractual*

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[3] (CCT 109/19) [2020] ZACC 13; 2020 (5) SA 247 (CC)
[4] 1927nad 69
[5] (183/17)[2017] ZASCA 176 (1 December 2017); 2018 (2) SA 314 (SCA)

agreement freely and voluntarily. The notion of the privity and sanctity of contracts goes hand in hand with the freedom to contract, taking into considerations the requirements of a valid contract, freedom to contract denotes that parties are free to enter into contracts and decide on the terms of the contract."

Evaluation

[34] The applicant and the first respondent entered into a valid, enforceable contract, doing so freely and voluntarily. The applicant performed in accordance with the terms and provisions of the contract.

[35] The first respondent derived benefits from the performance by the applicant. One would expect the first respondent to discharge his obligations under the contract. There is no valid reason given by the first respondent for his failure to perform. He cannot try to resile from the contract by virtue of the transfer of the property being delayed by circumstances of his own creation.

[36] The delay was not occasioned by any conduct on the part of the applicant. It was by an encroachment and by issues related to the first respondent's divorce.

[37] It would be undermining the spirit of the principle of *pacta sunt servanda* to allow the first respondent not to honour the contract.

[38] The R10 000 paid by the applicant, for water supply reconnection, should be repaid to the applicant.

[39] I thus find that the applicant has made out a case for the sought relief.

[40] Consequently, the following order is made:

1. The application is found to be urgent;

2. The first respondent is ordered to sign all documentation within 48 hours after the granting of this order, necessary to ensure the registration of the transaction and transfer of the property into the applicant's name at the

office of the fifth respondent and to enable the fourth respondent to proceed with the lodgement of the papers to effect transfer of the property by the fifth respondent into the name of the applicant.

3. If the first respondent fails to comply with the order set out in paragraph 2 above, the second respondent or its representative is authorised to sign all the documentation on behalf of the first respondent necessary to ensure the registration of the transaction and transfer of the property into the applicant's name in the office of the fifth respondent and to enable the fourth respondent to proceed with the lodgement of the papers to effect transfer of the property into the name of the applicant by the fifth respondent.

4. The first respondent is ordered to pay all outstanding fees in respect of the transfer to the fourth respondent within 48 hours after the granting of this order; this includes the amount of R10 000 the applicant already paid on the arrear water usage forming part of the rates and taxes owed and payable on the property.

5. Should the first respondent not make payment of the outstanding costs due, the fourth respondent is authorised and ordered to make payment of the outstanding fees from any excess available after the cancellation of the bond which the first respondent had with the third respondent in respect of the property, upon cancellation of the bond with the fifth respondent.

6. First respondent is ordered to pay the costs of this application on a party and party Scale C, including the costs of Counsel

SHAI AJ

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

APPEARANCES

Counsel for the Plaintiff:	Adv J Van den Bergh
Instructed by:	DK Attorneys
Counsel for the Defendant:	Adv T Ngwenya
Instructed by:	JF Shabangu Attorneys
Date of Hearing	18 March 2025
Date of Judgment:	27 March 2025

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be **11h00** on **27 MARCH 2025.**