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REPUBLIC OF SOUTH AFRICA



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

CASE NO: HCAA30/2023

LP CASE NO: 3100/2021

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 14/05/2025

SIGNATURE

In the matter between:

MONGADI JACOB CHUENE
(ID NO: 5[...])

APPELLANT

And

THE FAVOURS CATHEDRAL CHURCH

RESPONDENT

In re:

THE FAVOURS CATHEDRAL CHURCH

APPLICANT

And

MONGADI JACOB CHUENE

RESPONDENT

(ID NO: 5[...])

JUDGMENT

Mangena AJ

[1] **The Favours Cathedral Church** instituted legal proceedings against **Mr Mongadi Jacob Chuene** in which it sought a declarator that Mr. Chuene lawfully sold the property known as **ERF 8[...] Seshego-G** to her on **18 August 2017** for the agreed price of **R150 000.00**. There were other ancillary and consequential orders mentioned in the notice of motion.

[2] The court a quo, per **Mthimkhulu AJ**, granted the orders and directed **Mr Chuene** to pay the costs of the application. Unhappy with the order, Mr Chuene lodged an appeal, and the matter came before us with the leave of the court a quo granted on **14 February 2025**.

[3] Prior to the hearing of the appeal, we were informed that the appeal was previously struck off the roll due to a defect in the order which granted the leave to appeal. The defect was corrected on **14 February 2025** and we were presented with a new court order which granted leave to the full court of this Division.

[4] On the **25th April 2025**, the Appellants served and filed a notice of removal in which it is stated “***Be pleased to take notice that the above-mentioned Appellant hereby removes the application for leave to Appeal enrolled for hearing on 02 May 2025***”. There was however no application for leave to appeal which was enrolled for hearing on 02 May 2025. What was enrolled and scheduled for hearing was a full court appeal with a notice of set-down served by the appellant upon the respondent on **11 March 2025** and filed with the registrar on **12 March 2025**. I may as well indicate that there was no appearance for the appellant despite the fact that the appeal was set-down and still remained on the roll.

[5] Notwithstanding the filing of the notice of the removal of the application for leave to appeal, counsel urged us to proceed to adjudicate on the appeal as same was properly before us. In support of his submission, **Mr Mabotja** relied on the notice of set-down served upon the respondent on **11 March 2025** and filed with the Registrar on **12 March 2025**. He handed to us a copy of the letter he addressed to the appellants on **30 April 2025** wherein he brought it to their attention that: -

- (a) No leave to appeal has been enrolled for hearing on **02 May 2025**.
- (b) Their heads of argument are still outstanding.
- (c) The respondent is entitled to finality on this matter.
- (d) The respondent will attend court on **02 May 2025** to pray for the dismissal of the appeal.

[6] **Mr. Mabotja** was correct and there is a plethora of case law to support him on his contention that the appeal should proceed. No party has unilateral authority to remove the matter from the roll. Once the matter is enrolled, it can only be removed by the court in the absence of the agreement between the parties. This is so because everything including litigation must at some point come to an end. When a party sets the matter down and invites his/her opponent to the hearing, it is no longer open to him/her to unilaterally withdraw it or remove it. Van der Schyff J gave an expressed emphasis

on this legal position in ***Dey Street Properties (Pty) Ltd v Salentias Travel and Hospitality CC [2021] ZAGPPHC 462 (15 July 2021)*** when she said:

[5] Rule 41(3) provides for postponement by agreement. By providing for agreement, it is implied that a party cannot unilaterally postpone a matter. Where the opposing party's consent cannot be obtained, it is left to the court to decide whether a matter will, on application, be postponed. The same logic applies to the removal after a matter has been enrolled for hearing. An applicant as dominus litis is bound to the date determined by it, in the notice of motion (or set down if I may add) for the matter to be heard".

[7] Guided by these principles, we proceeded to hear the matter.

[8] The facts are uncontroverted and briefly as follows: -

8.1. The appellant and respondent concluded a verbal lease agreement in terms of which the appellant leased **ERF 8[...]** **Seshego-G** to the respondent. They subsequently concluded a written sale agreement in terms of which the respondent had to pay an amount of **R150 000.00** as purchase price.

8.2. Respondent effected payment of the total purchase price into the appellant's FNB bank account on **10 August 2017**.

[9] The appellant admitted to both the conclusion of the sale agreement and receipt of payment but challenged the legal validity of the agreement on **two (2) main grounds** namely, non-compliance with Alienation of Land Act 68 of 1981 and section 15 of Matrimonial property Act of 1984.

[10] The court a quo dismissed both points as being without merit. With regard to section 15 of the Matrimonial Property Act 88 of 1984, the court a quo correctly found

that the appellant failed to prove the existence of a valid marriage between himself and **Ms Sefole** who had since passed away. It was not clear on the papers as to when did **Ms Sefole** pass away and the appellant's defence of lack of spousal consent was rejected. This defence was not taken up on appeal.

[11] In the notice of appeal, the appellant persisted with his defence relating to non-compliance with the provisions of the Alienation of Land Act 68 of 1981, in particular sections 2(1), 2(2A) and section 29A(1) and 29(A)(5)(b).

[12] The sections relied upon by the appellant do not advance his case. Section 29A is headed "Purchaser's right to revoke or terminate deed of alienation" and prescribe circumstances under which the purchaser may revoke the offer or terminate the deed of alienation. The appellant is the owner of the property and the seller in terms of the deed of alienation concluded with the respondent. The court a quo correctly found that the appellant cannot rely on section 29(A) to attack the validity of the agreement for the simple reason that he is not the purchaser. The purchaser is defined in the Act as "any person to whom land is alienated under a contract".

[13] In **Section 13 Dolphin Coast Medical Centre v Cower Investments, 2006 (2) SA 15 (D&CLD)** Olsen J correctly held that in enacting section 29A the legislature intended non-compliance with the statutory provision would render the transaction voidable at the instance of the party for whose benefit the provision was enacted. He found authority in an old judgment by Innes CJ in the matter of **Wilken v Kohler 1913 AD 135** where he said:

"Speaking generally, it is true that statutory provisions introduced simply for the benefit of an individual or a class may be waived by the person or persons for whose advantage they were devised. And a right given on those lines to treat a contract as void may be exercised or not at the pleasure of the party concerned; the agreement would in effect be voidable at his option."

This finding was confirmed by the Supreme Court of Appeal in ***Gower Investments (Pty) Ltd v Section 3, Dolphin Coast Medical Centre CC and Another, 2007 (3) SA 100 (SCA)***.

[14] Regarding the provisions of sections 2 and 2A of the Alienation Act, the court a quo found that there has been compliance in that the document was signed by both parties.

[15] Section 2A required the deed of alienation to contain the right of a purchaser or prospective purchaser to revoke the offer or terminate the deed of alienation in terms of section 29A. It is clear that non-compliance with this clause does not invalidate the agreement concluded between the seller and the purchaser. The document signed by the parties contained all the essential elements of a deed of alienation, namely merx (the thing sold), intention of the parties and the purchase price.

[16] The seller signed the deed of alienation and disposed off his rights of ownership in the property (**ERF 8[...] - Seshego-G**) against payment of the agreed purchase price of **R150 000.00**. In my view a valid and binding contract was concluded. The respondent was within his right to approach the court to have it enforced so that transfer and registration of the land can take place. There was no error on the part of the court a quo. It follows therefore that the appeal must fail.

[17] I make the following order:

17.1. The appeal is dismissed.

17.2. The appellant is ordered to pay costs on a party and party scale B of the High court tariffs.

**M.I. MANGENA
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE**

I agree,

**G.C. MULLER
JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE**

I agree,

**M. NAUDE-ODENDAAL
JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE**

It is so ordered.

APPEARANCES

**FOR APPELLANT : No Appearance
Selokela Mashola Attorneys
Polokwane**

**FOR FIRST RESPONDENTS : Mr. M.L Mabotja (Attorney)
Makwela & Mobotja Attorneys
Polokwane**

HEARD ON : 02 May 2025

DELIVERED ON : 14/05/2025