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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 7634/2023

(1) REPORTABLE: YES/NO

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

(3) REVISED.

DATE: 07 JULY 2025

SIGNATURE

In the matter between:

MELANIE BALATINCZ

(Passport No: P[...])

APPLICANT

AND

ANDRIES JOUBERT COETZER N.O

(Appointed executor of the deceased estate of Susara

Margaretha Allman (Jacobs)

FIRST RESPONDENT

PETRONELLA GERTINA VOSLOO N.O

SECOND RESPONDENT

DAWIE RUS (PTY) LTD

2019/216715/07

THIRD RESPONDENT

RUDOLPH MATHINUS JACOBS

FOURTH RESPONDENT

BA-PHALABORWA MUNICIPALITY

FIFTH RESPONDENT

THE REGISTRAR OF DEEDS (LIMPOPO)

SIXTH RESPONDENT

JUDGMENT

MANGENA AJ

INTRODUCTION

[1] The applicant who is an Australian Citizen sincerely believes that she concluded a valid and binding agreement with the third respondent for the purchase of a farm known as **Portion 23 Grietje NR 6, Phalaborwa, Limpopo Province** held under **title deed T[...]**. The property is used as a private nature reserve. The agreement, according to the applicant was concluded on **23 May 2023**.

[2] She instituted this proceedings to obtain a declaratory order to the effect there is a written sale agreement concluded between her and the third respondent. In the alternative to the declaratory order, she seeks an order to rectify the signed offer

to purchase concluded between her and the third respondent to reflect the expiry date in clause 25 to read **23 May 2023** instead of **10 May 2023**.

- [3] The third respondent, **Dawie Rus (Pty) Ltd**, opposes the relief sought by the applicant on the basis that there is no valid and binding agreement concluded between them. This is so, according to **Dawie Rus**, because the agreement signed on **23 May 2023** was not capable of acceptance in that it contained a “*suspensive condition*” in clause 25 which stated that the offer was “*irrevocable and expires on 10 May 2023 at 22h00*”. It is therefore not legally possible to accept an offer that has lapsed. Once the suspensive condition is not met the entire agreement becomes null and void and consequently of no legal force and effect.
- [4] **Dawie Rus** further contends that once an agreement lapses due to non-fulfilment of a suspensive condition it cannot be revived and or rectified.
- [5] What is at the heart of the dispute is whether there is a legally valid and binding agreement concluded between applicant and the third respondent. To answer this question some background facts will be necessary to provide context.

BACKGROUND

- [6] The applicant visited South Africa on few occasions to view properties which were on sale. One of the properties she viewed was **Portion 23, Grietje Farm NR 6** marketed by **Century 21 Wildlife Properties**. The estate agent she dealt with at **Century 21** was **Ms Michelle Severin**. I hasten to mention that the property belonged to the **late Susara Margaretha Allman (Jacobs)** who had since died. The mandate to market the property was signed by the second respondent who was the daughter of the deceased. I will deal with her authority to represent the estate later.

- [7] On the **14 February 2023**, applicant made an offer to purchase the property for **R2 400 000.00**. The offer was not accepted. She made another offer of **R3 000 000.00** on the **19 March 2023** and it suffered the same fate in that it was not accepted.
- [8] On the **30th March 2023** she received what she calls a “counter-offer” in respect of the same property. The “counter-offer” was signed by the second respondent purportedly as the representative of **the estate late Susara Margaretha Allman (Jacobs)**. She did not accept this offer.
- [9] She viewed the property again in **May 2023** and informed the estate agent that she was still keen to acquire the property. On the **10 May 2023** she received a new offer to purchase signed by the second respondent as “the seller” acting on behalf of **the estate late Susara Margaretha Allman (Jacobs)**. The offer came through the agency of **Century 21 Wildlife Properties** and contained a clause 25 with a heading “**Expiration**”. It provided as follows:-
- “This offer is irrevocable and expires at 22h00 on 10 May 2023 and shall be deemed to be accepted on signature hereof by the seller irrespective of when notification thereof is given to the purchaser”.*
- [10] Determined not to loose the property, she signed the offer to purchase and returned it to the estate agent the same day before the cut-off time of **22h00**. With this “**acceptance**” she thought that the deal is sealed, and the farm has been secured. However, she thought wrong as what transpired thereafter testifies.
- [11] On the **11 May 2023** she received an email from the estate agent advising that there were errors on the offer to purchase which needed to be corrected. The errors were picked up by the first respondent who was instructed to attend to the

transfer of the property from the deceased estate. According to the attorney, the offer to purchase was to be amended to reflect **Dawie Rus (Pty) Ltd** as the seller and have one of its authorised representatives sign on its behalf.

- [12] On enquiry by the estate agent whether the parties (Dawie Rus (Pty) Ltd and the applicant) were required to sign a new contract, the first respondent advised that same was not necessary. The old offer to purchase could be amended and have both parties initial along side the effected amendments. She received an amended page reflecting **Dawie Rus (Pty) Ltd** as the seller, initialled it and sent it back to the agent via email.
- [13] On the **15 May 2023**, the first respondent confirmed acknowledgement of the signed offer to purchase and issued an invoice in respect of the transfer costs payable by the applicant. He also furnished confirmation of the banking details for the payment of the agreed total purchase price of **R3 600 000.00**.
- [14] Acting in belief that there is a valid and binding agreement concluded between her and the seller of the property, she proceeded to conduct borehole tests in preparation for taking full ownership.
- [15] She later learned that there is asbestos on the property and asked that the seller removes it at its own costs. The seller refused to be liable for the costs of removal and threatened to pull out of the contract on the basis that the estate agent misrepresented the facts regarding the existence of asbestos on the property as she knew that it was there. The first respondent was of the view that there was no binding agreement.
- [16] On the **19th June 2023**, applicant addressed an email to the first respondent once again highlighting the breach of contract on the part of the seller and requesting that it be remedied. She further enquired whether she is still required to transfer the full purchase price and if so when should same be done.

- [17] Matters came to the head on **22 June 2023** when the first respondent addressed a response email to the applicant wherein he stated as follows: -

“We refer to your letter [dated] 19 June 2023 and wish to confirm that there is no legal agreement and therefore our instruction is not to proceed with any transfer and not to accept any payment”.

- [18] Against this background, two issues arise for legal determination. The first one is the authority of the second respondent to bind the estate of the **late Susara Margaretha Allman (Jacobs)**. As stated earlier, the second respondent is the daughter of the deceased and the beneficiary or heir of the estate. She is not the appointed executor of the estate. In our law, only a duly appointed executor can act on behalf of the deceased estate. In **Segal and Another v Segal and Others, 1976(2) SA 531(c)** the court put the position as follows: -

“In our law the executor is the person in whom, for administrative purposes, the deceased’s estate vests. It is his function to take all such steps as it may be necessary to ensure that the heirs in the estate to which he is appointed received what in law is due to them”.

(See also Jones v Pretorius No, 2022(1) SA 132(SCA) at par 15)

- [19] The second respondent had no authority to make an offer to the applicant regarding the sale of the property. The purported offer by the second respondent and the subsequent acceptance by the applicant is of no legal force and effect as it was not capable of producing a legally valid and binding contract.

- [20] The second issue is whether a valid and binding contact came into existence between the applicant and the third respondent, **Dawie Rus (Pty) Ltd** on **23 May**

2023 despite the fact that clause 25 required the offer to be accepted by **22h00** on **10 May 2023**.

[21] Both parties approached the matter on the common footing that clause 25 is a suspensive condition. It was only at the hearing of the matter that **Advocate Du preez** for the applicant submitted that properly construed, clause 25 is not a suspensive condition. I agree.

[22] A suspensive condition is a condition in a valid and binding agreement concluded between the parties. Its effect is to suspend the full operation of the obligations and renders it dependant on the uncertain future event. Put differently, a contract which is subject to a suspensive condition is a valid contract from the moment of its conclusion and neither party can unilaterally resile from it. **(See Lawsa, vol 9, par 362)**.

[23] In **Mia v Vermark Holding (Pty) Ltd [2010] 1 All SA 280(SCA) Wallis AJA** (as he then was) explained the legal effect of a suspensive condition as follows:-

“The conclusion of a contract subject to a suspensive condition creates a very real and definite contractual relationship between the parties. Pending fulfilment of the suspensive condition the exigible content of the contract is suspended. On fulfilment of the condition the contract becomes of full force and effect and enforceable by the parties in accordance with its terms. No action lies to compel a party to fulfil a suspensive condition. If it is not fulfilled the contract falls away and no claim for damages from its failure”.

[24] Considered against the above legal exposition, it is clear that clause 25 of the signed agreement between the parties does not qualify to be regarded as a suspensive condition. This is so because it does not suspend the operation of a

valid and binding agreement between the parties. Secondly it does not render the contract dependent on any uncertain future event. In the absence of a valid and binding agreement there are no contractual obligations to be suspended as there is no legal relationship between the parties. That the parties chose to call it a suspensive condition is of no legal significance and I am free to disregard that erroneous characterization. It is a legal misnomer and it is not binding on me. To conclude on this point, I can do no better than to quote **Salduker AJA** (as she then was) in **De Klerk v Steven-Lee Properties (Pty) Ltd 2013 SACLR 123(A)** where she said that “the most important characteristic of a (suspensive) condition is that it relates to a future uncertain event. In **Design and Planning Service v Kruger, 1974 (1) SA 689(T) at 695, Botha J** stated as follows:-

“In the case of a suspensive condition, the operation of the obligations flowing from the contract is suspended, in whole or in part, pending the occurrence or non-occurrence of a particular specified event para 9”.

- [25] In my view, clause 25 of the agreement constitutes a term of the agreement and does not have the effect of nullifying the agreement. In the context of this case, it could not have been the intention of the parties to have the contract concluded on date which had passed. This is so because the first respondent who was the agent of the third respondent had on behalf of his client expressed satisfaction with the material terms of the agreement in respect of the purchase price and the subject property on a date after **10 May 2023**. There was a common understanding between the parties that the sale has been concluded subject to the signing of the contract by the authorized representative of the company. When the fourth respondent signed the offer to purchase on **23 May 2023** on behalf of the third respondent, he did so in fulfilment of the representations made by his attorney as well as in execution of the resolution of the company that

mandated and authorized him to conclude the contract on the terms as contained in the offer to purchase.

- [26] Another reason why clause 25 is irrelevant to the issue regarding the validity of the contract is that it was not inserted by any of the parties to the contract concluded on **23 May 2023**. As stated earlier, the date of **10 May 2023** at **22h00** was in the offer made by the second respondent, which offer was not legally competent as she had no authority to deal with the assets of the estate. The agreement concluded on the **23 May 2023** between the applicant and the third respondent is for all intents and purposes a new agreement existing independent of the one signed between the applicant and second respondent.
- [27] Objectively viewed, the applicant made an offer to the third respondent for the purchase of the property on **11 May 2023** when she initialled the amended pages of the offer to purchase on the advice of the first respondent who was an attorney and agent of the third respondent. . The offer was open for acceptance by the seller within a reasonable time as it contained no valid expiry clause. The seller (in this case, Dawie Rus (Pty) Ltd) represented by the fourth respondent accepted the offer on 23 May 2023 at which point a valid and binding agreement came into existence.
- [28] Acting consistently with her belief that there is a valid and binding agreement, applicant proceeded to fulfil all her contractual obligations and paid the full purchase price into the first respondent's trust account. This act of payment attracted a response from the first respondent wherein she dealt with the effect of a suspensive clause in a contract and once again confirmed his client's view that there was no valid and binding agreement concluded between the parties.
- [29] I have already found that clause 25, properly construed, is not a suspensive condition. I have also found that the agreement between the applicant and the third respondent constituted a new sale agreement for the purchase of the farm

and the reference to the “10 May 2023 at 22h00” is of no legal significance as it was not inserted by either party. For this reason, it should be regarded as *pro-non-scripto*.

[30] I therefore find that the applicant has made out a case for the relief as set out in the Notice of motion and the following orders are made:-

30.1. The written sale agreement concluded between the applicant and the third respondent (attached to the founding affidavit) is declared valid and binding between the parties.

30.2. The first, second, third and fourth respondents are directed to comply with the agreement.

30.3. The conveyancers appointed by the first respondent, alternatively the third and fourth respondent are authorised and directed to take all necessary steps to transfer the property, known as **Portion 23 of the Farm Grietje NR6, Phalaborwa, Limpopo Province** held under **title deed T[...]** to the applicant.

30.4. The respondents referred to **order 3** above shall **within 07 days** after the demand by the conveyancers provide all the required documentation necessary to pass the transfer, sign all the documents and generally do all things necessary to give effect to the transfer of ownership.

30.5. In the event the respondents fail to give effect to the requests by the conveyancers, the sheriff of this court or his lawfully appointed deputy are authorised and directed to sign all transfer documents to pass transfer to the applicant.

30.6. The third respondent is ordered to pay the costs of this application on a party and party scale C of the High Court which costs includes the costs of two counsel.

MANGENA
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

FOR APPLICANT : **AS KINGON ATTORNEYS**
HOEDSPRUIT
C/O STEYTLER NEL & PARTNERS
POLOKWANE

FOR 1ST TO 4TH RESPONDENTS' : **AJ COETZER & DE BEER ATTORNEYS**
MOKOPANE
C/O NELIS BRITZ ATTORNEYS
POLOKWANE

HEARD ON : **30 APRIL 2025**

DELIVERED ON : **07 JULY 2025**