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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 796/2024

REPORTABLE

In the matter between:

DESMOND MATTHEW DE WET

APPLICANT

and

MARK GEORGE BARRON

FIRST RESPONDENT

THE SHERIFF, DISTRICT OF PAARL

SECOND RESPONDENT

REGISTRAR OF DEEDS, CAPE TOWN

THIRD RESPONDENT

STANDARD BANK OF SA LTD

FOURTH RESPONDENT

Coram: **MOOSA AJ**

Heard: 4 AUGUST 2025

Delivered: 22 AUGUST 2025 (delivered electronically to the parties)

Summary: Prescription – whether claim for specific performance prescribed
– nature of reciprocal obligations – interruption of prescription –

sections 12(3), 13(2) and 14(1) of the Prescription Act considered.

ORDER

1. The application is dismissed with costs. Counsel's fees are allowed on scale B.
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JUDGMENT

Moosa AJ

Introduction

[1] This judgment pertains to an application for specific performance. It was issued on 12 January 2024. Pursuant to a deed of sale dated 25 July 2014, the Applicant seeks an order which would compel the First Respondent to take all necessary steps to effect registration of transfer into the Applicant's name of one-half, undivided share in portion 54 (portion of portion 14) of Farm no. 1202 in the Stellenbosch Municipality, held by First Respondent under Deed of Transfer T[...] ("the property").

[2] The application was argued before me on a narrow point of law only, namely, whether the Applicant's claim for transfer of the property was unenforceable by reason that it had prescribed under the Prescription Act 68 of 1969 ("the Prescription Act").

[3] If the Applicant's claim is subject to extinctive prescription as was plead by the First Respondent, then that would be dispositive of the application. Counsel for both parties agreed that, notwithstanding the contention in the court papers that there are material factual disputes requiring oral testimony, the facts are germane to a determination of the prescription issue are common cause so that this issue is capable of being resolved on the papers alone, even using a robust, common-sense approach (if necessary). I agree. See *Soffiantini v Mould* 1956 (4) SA 150 (E) at 154G-H.

Issue for adjudication

[4] The issue which forms the subject of this judgment is a crisp question of law, namely, whether the Applicant's claim for transfer of the property has prescribed under the Prescription Act. If yes, then the application must fail and is to be dismissed.

Relevant factual matrix

[5] The facts narrated under this heading are those common cause ones distilled from the pleadings which are relevant to a determination of the prescription issue.

[6] The Applicant and the First Respondent have been acquainted for more than two decades. During 2013/2014, the First Respondent experienced financial difficulty. Consequently, he could not fulfil his monthly loan repayment (i.e., mortgage bond) instalments to Standard Bank of SA Ltd ("the Bank"). The property is hypothecated to the Bank as security for First Respondent's indebtedness to it arising from a term loan. When the First Respondent defaulted on his payments, the Bank sued. It obtained judgment and an order authorising foreclosure. To prevent the complete loss of the property during a sale in execution, First Respondent required the sum of R50 000,00. Enter the Applicant to the scene.

[7] By agreement, the Applicant advanced the much-needed sum of R50 000,00. This was paid to the Bank, thereby averting the sale in execution completely.

[8] The R50 000 advance was not given as a loan. By agreement in writing, that payment was made in fulfilment of a contractual obligation included as a 'special condition' in a deed of sale entered into between the Applicant and the First Respondent at Queenstown, Eastern Cape on 25 July 2014 ("the deed of sale").

[9] In terms of clause 23, and for the financial benefit of the First Respondent, the deed of sale stipulated that the 'Seller & Purchaser hereby authorises Attorneys Bowes McDougall Inc on date of signature of this Deed of Sale to pay over an

amount of R50 000,00 ... of the purchase price to Standard Bank to cancel the Sale in Execution which is scheduled to be held on Monday 28/7/2014'.

[10] The deed of sale executed on 25 July 2014 is the contract forming the basis for the Applicant's cause of action against the First Respondent for specific performance. Clause 4 thereof is headed 'Transfer'. It provides for transfer of the property to the Applicant after compliance with clauses 2 and 3 of the deed of sale.

[11] For present purposes, it is necessary to quote clauses 2, 3, 4 and 6 of the deed of sale in full, as well as the relevant part of the breach clause. They read as follows:

'2. PURCHASE PRICE

- 2.1 The purchase price is the sum of **R130 000.00 (ONE HUNDRED AND THIRTY THOUSAND RAND)** which amount has been paid in full.
- 2.2 The SELLER accepts responsibility for payment of half of all the outstanding debt in respect of the property.
- 2.3 It is herewith recorded that the **PROPERTY** is bonded in favour of Standard Bank, Mortgage Bond Number B81292/2004 for the amount of **R230 000.00 (TWO HUNDRED AND THIRTY THOUSAND RAND)**. An amount of approximately **R277 000.00 (TWO HUNDRED AND SEVEN SEVEN THOUSAND RAND)** is outstanding.
- 2.4 An amount of R55 135.65 (**FIFTY FIVE THOUSAND ONE HUNDRED AND THIRTY FIVE RAND AND SIXTY FIVE CENTS**) is due to the Stellenbosch Municipality for arrear and annual rates and taxes.
- 2.5 All costs incidental to the registration of the transfer and mortgage bond and rates shall be paid to the **SELLER'S** Conveyancers within 14 (fourteen) days of being called upon to do so by such Conveyancers.
- 2.6 Both the **SELLER** and **PURCHASER** shall be required to sign any transfer and bond documentation to give effect to the

registration of the transfer and/or bond within 7 days of being called upon to do so.

3. **COST OF TRANSFER**

The **PURCHASER** shall pay all transfer costs incurred in respect of the transfer of the **PROPERTY**, including transfer duty and costs of this Deed of Sale, and any **VALUE ADDED TAX** on such costs, which amounts shall be paid immediately upon request of the **SELLER'S** Conveyancers and provided for in Clause 2.5 hereof.

4. **TRANSFER**

Transfer of the **PROPERTY** shall be passed by the **SELLER'S** Conveyancers, Bowes McDougall Incorporated and shall be given and taken upon the **PURCHASER** and **SELLER** having complied with Clause 2.1, 2.2, 2.3, 2.4, 2.5 and 3 hereof. ...

6. **RATES AND TAXES**

6.1 Both the **SELLER** and **PURCHASER** shall be responsible for all arrears rates and taxes and sewerage charges levied against the property.

6.2 Both the **SELLER** and **PURCHASER** undertake that all arear rates and taxes and refuse removal and sewerage charged levied against the property and all service charges will be paid in full on transfer and that the Municipal account will be paid in full and will be up to date when the property is transferred. ...

10. **BREACH**

...

10.2 Similarly in the event of the **SELLER** failing to fulfil, on due date, any of the terms and conditions of this Deed of Sale, the **PURCHASER** will be obliged to give the **SELLER TEN (10)** days written notice, from the date of delivery of a written notice to the **SELLER** to rectify their breach, failing which the **PURCHASER** will be entitled:

- (a) to cancel the sale by registered letter addressed to the **SELLER** and to claim any damages which he /she may have suffered; or
- (b) to claim delivery of the **PROPERTY** against payment of the purchase price.'

[12] Applicant complied with some of his contractual obligations. This included the special condition in clause 23 of the deed of sale. Clause 2.1 records that the Applicant paid the purchase price of R130 000,000 in full. He partially complied with his obligations under clause 6 read with clause 2.4 of the deed of sale. This he did by paying R20 570,00 of the arrear municipal charges totalling R55 135.65. He made payments to Stellenbosch municipality in periodic instalments. This occurred during the period between 14 October 2016 to 18 February 2021 (see annexure DMD6).

[13] The founding papers records that the Applicant took steps for the first time in January 2021 to ensure that transfer took place. This was more than six years after the deed of sale was executed on 25 July 2014. The Applicant was unsuccessful. He avers that the First Respondent was not contactable at that time. This averment is undisputed.

[14] The Applicant subsequently contacted the First Respondent on 1 February 2021. On the pleadings, this is the first time when the Applicant called on the First Respondent to give him transfer of the property. Applicant refers to this as an 'informal request'. In reply, the First Respondent informed the Applicant that the latter should reach out to the former's attorney, Mr L Fortuin. The Applicant duly complied.

[15] On 1 February 2021, when the Applicant reached out to Mr Fortuin telephonically, the latter informed the Applicant that, in his (Mr Fortuin's) view, the deed of sale was unenforceable by reason that the property in question was agricultural land, which could not be sold without ministerial approval first being given under the Subdivision of Agricultural Land Act 70 of 1970. It is common cause that such approval had not been obtained.

[16] According to the founding papers, a substantial delay exceeding two years then ensued. The delay on the Applicants' part was partly due to the advice received

from some attorney firms approached by him to enforce his claim under the deed of sale, which indicated that a claim for transfer was unenforceable. Other law firms took no action regarding his case. The Applicant became despondent as a result of this and failed to pursue the matter with any vigour. Finally, in August 2023, the Applicant appointed Etienne Fourie & Co Attorneys (“EF & Co”). They launched the present application.

[17] Prior to initiating this application on 12 January 2024, EF & Co commenced their work by conducting a property search at the Deeds Office. This was done in August 2023. It was then that EF & Co discovered that there was an endorsement on the Deed of Transfer T[...] which pertains to the property held by the First Respondent. In terms thereof, the property is exempted from the requirement of prior ministerial consent for any sale. Accordingly, the absence of ministerial consent did not then, and does not now, serve as a bar to registration of transfer as sought by the Applicant on the strength of rights arising from the deed of sale.

[18] On 13 October 2023, EF & Co sent a formal letter of demand to the First Respondent in terms of clause 10.2 of the deed of sale. In terms of that demand, the Applicant insisted on registration of transfer of the property into his name pursuant to the deed of sale. On 30 November 2023, the First Respondent replied. He recorded his refusal to effect transfer. In his reply, no mention was made about prescription.

[19] The First Respondent’s refusal to comply with the terms of the Applicant’s demand for transfer culminated in this application being launched in early January 2024. In his answering affidavit, the First Respondent averred, inter alia, that the Applicant’s claim for transfer lapsed through the operation of extinctive prescription.

Submissions by the parties’ counsel

[20] Applicant’s counsel, Mr Karuaihe contended that although the Applicant’s claim for transfer constitutes a debt that is subject to the Prescription Act, prescription has not commenced (“the primary argument”). Mr Karuaihe argued, in the alternative, that while prescription may have commenced once the deed of sale

was entered into, its progression was subsequently interrupted and/or had not been finalised by the time this application was launched on 12 January 2024 and was served on 24 January 2024 (“the secondary argument”).

[21] The primary argument is predicated on the submission that prescription would only begin to run once the First Respondent’s debt to the Bank, being the Fourth Respondent, is settled in full by the end of the loan term, which debt is secured by the mortgage bond mentioned in clause 2.3 of the deed of sale. Mr Karuaihe submitted that compliance by the First Respondent with his financial obligation to the Bank by the end of the loan term is a pre-requisite for the Applicant’s entitlement to enforce his claim for transfer. Although the loan period was unclear on the papers, counsel for both parties were ad idem that the loan term had not yet elapsed. The First Respondent was still servicing that debt to the Bank by way of monthly instalments.

[22] Mr Karuaihe argued that the settlement of the term loan debt, which is secured by the mortgage bond registered over the entire property, is a condition precedent for the transfer of the property as outlined in clause 4 of the deed of sale. Therefore, the Applicant is precluded from demanding settlement of that debt, and has been so precluded at all times material since the date of execution of the deed of sale. Mr Karuaihe submitted that, for this reason, the Applicant had not demanded settlement of the debt to the Bank, which would allow for cancellation of the mortgage bond and registration of transfer into his name.

[23] In the alternative, Mr Karuaihe submitted that, in accordance with s 14(1) of the Prescription Act, prescription was interrupted by each and every payment made by the Applicant to the local authority pursuant to clause 6 of the deed of sale. Mr Karuaihe submitted that, based on this reasoning, the running of prescription was interrupted until 18 February 2021, being the date of the Applicant’s last payment to the Stellenbosch municipality. He argued that since the application was launched and served on the First Respondent within three years from that last payment date, Applicant’s claim has not prescribed and is still extant and enforceable in law.

[24] Mr Karuaihe also relied on s 13(2) of the Prescription Act. With reference to *Botha and Another v Rich NO and Others* 2014 (4) SA 124 (CC) para 43, he submitted that clause 6 of the deed of sale created reciprocal obligations for himself and the First Respondent regarding the arrear local authority debts levied on the property. He argued that the First Respondent's debt to the local municipality had not prescribed by the time when this application was launched on 12 January 2024 and served on 24 January 2024. Consequently, so he argued, the First Respondent acknowledged his liability, which meant that the prescription could not have been completed.

[25] The First Respondent's attorney, Mr Vorster SC, cited *Blaauwberg Meat Wholesalers CC v Anglo Dutch Meats (Exports) Ltd* 2004 (3) SA 160 (SCA) and *Road Accident Fund and Others v Mdeyide* 2011 (2) SA 26 (CC) to argue that the Applicant's claim for property transfer is a 'debt' under the Prescription Act which has prescribed because of his inaction, which lasted for more than three years. He contended that the inaction was Applicant's failure to take steps timeously to enforce his transfer claim.

[26] Mr Vorster SC pointed to Applicant's failure to demand performance of the First Respondent's financial obligations imposed by the deed of sale. This includes, but is not limited to, payment of the arrear municipal charges and settlement of the debt owed to the Bank so that the mortgage bond could be cancelled and transfer effected. Mr Vorster SC argued, relying on *Uitenhage Municipality v Molloy* 1998 (2) SA 735 (SCA) at 742E - 743C, that the Applicant's failure for more than 9 years to use clause 10.2 of the deed of sale to demand performance of the First Respondent's obligations under the deed of sale and to sue for transfer renders the claim for transfer prescribed.

Discussion of the relevant prescription principles and their application in casu

[27] The defence of prescription places an evidential burden on the party raising it. Thus, the First Respondent must prove that Applicant's claim is extinguished by the lapse of a time period imposed by s 11 of the Prescription Act. See *Mcleod v*

Kweyiya 2013 (6) SA 1 (SCA) para 10. Accordingly, the First Respondent must establish that the Applicant failed to meet the standard of diligence required by s 12(3) of the Prescription Act. If a prima facie case for prescription is proved, then the onus shifts to the Applicant. See *Grimbeek v Jacobo* (922/2017) [2018] ZASCA 131 (27 September 2018) para 21.

[28] As appears from my summary of counsels' submissions, a key issue to be resolved is whether prescription has begun to run. This is the subject of s 12 of the Prescription Act. Accordingly, it is necessary to quote this provision so far as it is relevant to this application. Section 12(3) reads:

‘A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.’

[29] Based on s 12(3), prescription begins to run as soon as a ‘debt’ becomes ‘due’, or when knowledge of the debt becoming due can reasonably be expected of a creditor. Prescription is judicially interrupted when a process initiating a lawsuit for the recovery of a debt is issued, whether by summons or application, and served on a debtor. In the case of breach of contract, a creditor’s remedy is either to cancel a contract and claim damages; or to keep the contract alive and claim specific performance (as in this case). See *Rademeyer v Ferreira* 2025 (2) SA 1 (CC) para 59.

[30] For purposes of s 12(3), the Applicant is ‘the creditor’; First Respondent is ‘the debtor’. For the purposes of the Prescription Act, the term ‘debt’ is undefined. This term has, however, been the subject of judicial interpretation as to its import. See *Off-Beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Ltd and Others* 2017 (5) SA 9 (CC) paras 43 - 44; *Lotter and Another v Lona Fruit Cape (Pty) Ltd and Another* (19818/23) [2025] ZAWCHC 196 (12 May 2025) paras 59 - 60.

[31] In casu, the Applicant is owed a ‘debt’ as envisaged by s 12(3), namely, a contractual duty by the First Respondent to transfer the property, being an obligation

to deliver corporeal goods in the form of immovable property. See *Ethekwini Municipality v Mounthaven (Pty) Ltd* 2019 (4) SA 394 (CC) para 8. This is uncontroversial. While it is trite that a 'debt' under the Prescription Act includes an obligation arising from a contract for specific performance (*Tsie v Brenner and Others* 2024 JDR 1130 (GJ) para 29), the issue arising is: when does such a claim fall due?

[32] In *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* 2018 (1) SA 94 (CC) para 47, the apex court held as follows:

'In sum, the relevant principles may, in my view, be restated as follows. A contractual debt becomes due as per the terms of that contract. When no due date is specified, the debt is generally due immediately on conclusion of the contract. However, the parties may intend that the creditor be entitled to determine the time for performance, and that the debt becomes due only when demand has been made as agreed. *Where there is such a clear and unequivocal intention, the demand will be a condition precedent to claimability, a necessary part of the creditor's cause of action, and prescription will begin to run only from demand...*' (my emphasis added)

[33] In casu, the deed of sale does not specify an exact date when the First Respondent is obliged to give registration of transfer and Applicant is entitled to receive transfer. Since the contract is silent on when performance is due, it must be regarded as due on the date of the conclusion of the deed of sale, unless 'a clear and unequivocal intention' appears from its terms to the effect that transfer only becomes due once demand for it is made.

[34] The contract must be construed in order to ascertain if such an intention applies in this case. Contractual interpretation entails a unitary exercise (not a process occurring in stages) in which proper consideration is given to the objective content of the document being construed. Concerning commercial contracts, as with the deed of sale in casu, the provisions of the contract are to be given a sensible, business-like meaning which is appropriate in their commercial context so as to best give effect to the underlying purpose of the parties' agreement. See *Natal Joint*

Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) paras 18 - 22.

[35] As a result, the content of the deed of sale related to the alienation of agricultural land, its broader context, and purpose must be understood to determine when transfer became due and enforceable. Although clause 4 does not indicate a specific date for transfer, it indicates the timing thereof, namely, '[t]ransfer ... shall be given and taken upon the PURCHASER and SELLER having complied with Clause 2.1, 2.2, 2.3, 2.4, 2.5 and 3 thereof'.

[36] Clause 4 read in conjunction with clauses 2 and 3 are couched in a way that renders the timing of compliance with the duties in these clauses to be immediate, in the sense that the duties are to be performed immediately after signature, failing which the remedy in clause 10 may be invoked by the innocent party. Accordingly, I find that 'the debt' owed to Applicant (that is, transfer of the property) became 'due' immediately on 25 July 2014 (subject to compliance with clauses 2.1 to 2.5 and 3, which obligations were immediately due). A contrary intention does not appear clearly and unequivocally. Therefore, the Applicant was entitled to enforce his right to transfer as far back as the 2014 calendar year (see further the discussion under the next heading).

[37] Even if the deed of sale were interpreted as rendering the duty to pass transfer as becoming 'due' within a reasonable time (not immediately) from the execution of the contract on 25 July 2014, then I hold that the Applicant still delayed pursuing his claim more than three years beyond any date which would, in the circumstances, qualify as a 'reasonable time' computed the date of execution of the deed of sale. See *Tsie v Brenner* supra para 34.

[38] These factual considerations all align neatly with the decision in *Drennan Maud & Partners v Pennington Town Board* 1998 (3) SA 200 (SCA) at 290H-I in relation to the exercise of 'reasonable care' as required of a diligent creditor by s 12(3) of the Prescription Act. In that case, the SCA held:

'In my view, the requirement "exercising reasonable care" requires diligence not only in the ascertainment of the facts underlying the debt, but also in relation to the evaluation and significance of those facts. This means that the creditor is deemed to have the requisite knowledge if a reasonable person in his position would have deduced the identity of the debtor and the facts from which the debt arises.'

[39] The applicant also possessed all the necessary information to enforce his claim at all relevant points in time after the deed of sale was completed. The Applicant knew the identity of the party liable to give him transfer of the property, namely, the First Respondent. He knew the First Respondent – they had prior dealings with one another and they negotiated the terms of the contract directly with each other.

[40] The Applicant knew that his claim for transfer of the property arose from the deed of sale. As a result, he admits to making payment in terms of clauses 2.1, 2.4, 6.1, and 23 in compliance with his financial obligations for purposes of transfer under clause 4. All these facts enabled the Applicant to timeously demand performance from the First Respondent and to take legal action, whether immediately after the deed of sale was concluded, or within a reasonable time thereafter. He failed to do so promptly, resulting in prescription running its course.

[41] On 1 February 2021, the Applicant made an informal request to the First Respondent for transfer of the property. He formally did so in October 2023 under clause 10.2 of the deed of sale by way of a demand. This application was launched on 12 January 2024 and served on 24 January 2024. These facts demonstrate that the Applicant knew his debtor's identity, and he knew his debtor's whereabouts, and he knew of his right to claim transfer of the property.

[42] Accordingly, at all material times, it was well within the Applicant's control to demand performance from the First Respondent timeously, and to institute legal proceedings promptly. He neglected to judicially interrupt prescription within the legislated three-year period in s 11(d) of the Prescription Act computed from the date when the Applicant's claim for transfer became due under the deed of sale.

[43] The Applicant's failure to timeously demand transfer of the property and to timeously enforce his right to transfer by way of legal proceedings constitute inaction on his part which, in the context of this case, is negligent (not innocent). His lack of diligence and failure to exercise reasonable care has consequences under the law.

[44] I find that the First Respondent proved, on a prima facie basis, that the Applicant's claim for transfer of the property prescribed after the lapse of three years computed from the date when the 'debt' concerned fell 'due' under the deed of sale, irrespective whether that date is computed as being immediately after the execution of the contract concerned (as I have found was applicable in casu), or within a reasonable time after the execution thereof on 25 July 2014 (if the alternative reasonable time standard were to be applicable and is applied).

[45] The Applicant procrastinated. He demanded transfer late in 2023 and launched this application early in 2024, being almost a decade after his claim fell due. This is an inordinate delay. The Applicant failed to pursue his claim for transfer of the property with the level of expedition and diligence required of a creditor exercising reasonable care. The rationale underpinning the operation of the principle of extinctive prescription was aptly explained by the apex court in *RAF v Mdeyide* supra in the following terms:

'This Court has repeatedly emphasised the vital role time limits play in bringing certainty and stability to social and legal affairs and maintaining the quality of adjudication. Without prescription periods, legal disputes would have the potential to be drawn out for indefinite periods of time, bringing about prolonged uncertainty to the parties to the dispute. The quality of adjudication by courts is likely to suffer as time passes, because evidence may have become lost, witnesses may no longer be able to testify, or their recollection of events may have faded. The quality of adjudication is central to the rule of law.' (para 8)

[46] For all the foregoing reasons, I find that the defence of prescription ought to succeed, unless I am able to find merit in any of the arguments advanced by Mr Karuaihe on the Applicant's behalf. It is to this question that I now turn my attention.

Evaluation of the Applicant's case against prescription

[47] Paragraphs [20] through [21] above provide an outline of Mr Karuaihe's primary argument. Its effect is that the running of prescription is postponed until the date when the First Respondent settles his loan debt with the Bank by the end of the loan period as agreed to between the Bank and the First Respondent. Prior to that date, so the argument proceeded, the 'debt' owed to the Applicant by the First Respondent is not due. For the reasons advanced hereunder, I find that this argument is predicated on an untenable interpretation of the deed of sale. In my view, Mr Karuaihe's interpretation is both factually unsound and destructive, as a matter of law, of the Applicant's case for an order to compel transfer of the property.

[48] If, as a matter of fact and law, the Applicant's right to claim transfer is dependent on the First Respondent's fixed term loan with the Bank being settled in full at its expiration, then logic and common sense dictate that the application to compel registration of transfer is premature and, therefore, doomed. This would be so because it is common cause that the fixed term loan giving rise to the First Respondent's secured debt to the Bank has not yet expired; nor has the underlying debt to the Bank been settled.

[49] Accordingly, based on Mr Karuaihe's main contention, the Applicant would not currently have an enforceable right to assert transfer. But, in my view, a correct interpretation of the deed of sale inevitably leads to the conclusion that the Applicant's right to demand the transfer of the property is independent of the settlement of the underlying loan debt owed to the Bank at the conclusion of the term loan period.

[50] Mr Karuaihe was constrained to concede that there is no express provision in the deed of sale which renders the Applicant's *right to claim transfer suspended* or postponed until the term loan between the Bank and the First Respondent is settled

at the end of the loan period. Mr Karuaihe was unable to identify any clause in the deed of sale that can be construed as supporting the claim he made, despite my inquiry during the hearing. As a result, Mr Karuaihe's primary argument is not grounded in a proper interpretation of the deed of sale and must fail.

[51] The loan agreement underlying the mortgage bond and the date on which the last instalment of the underlying loan is due to be paid to the Bank are not mentioned in the deed of sale. Clause 2.3 merely records the existence of a mortgage bond in favour of the Bank and the balance 'outstanding' at 25 July 2014, being 'approximately R277 000.00'. These are significant objective considerations which emerge from the deed of sale and they are relevant to its interpretation.

[52] The objective factors mentioned here bolster my interpretation, and concomitant view, that the deed of sale envisages the stock standard, customary requirement that the seller, who is the First Respondent, must settle his indebtedness to the bondholder, who is the Bank, by no later than the date of registration of transfer so that ownership of the property can be given to the Applicant, as purchaser, without any encumbrance in favour of the Bank. This intention underpins the deed of sale, and is consistent with the underlying purpose of that agreement, namely, to pass ownership to the Applicant of an undivided share in certain agricultural land situate in Stellenbosch, Western Cape.

[53] If the intention of the contracting parties was to postpone the Applicant's right to receive and to claim transfer of the property only after the term loan between the Bank and the First Respondent is settled at the end of its loan period, then it can reasonably be expected of them to state so clearly in the deed of sale. The absence of an express provision indicating such an unequivocal intention speaks volumes.

[54] Mr Karuaihe's argument also flies in the face of the Applicant's pleaded position. If the Applicant believed that the bargain he made with the First Respondent was along the lines contended for by Mr Karuaihe, then it makes no sense that the Applicant took informal steps in February 2021 to procure transfer, and took formal steps in October 2023 by demanding transfer, and then finally suing for transfer in January 2024.

[55] It does not make business sense for the Applicant to pay the full purchase price (as stated in clause 2.1) and give the First Respondent money from the sale price to cancel the foreclosure sale (as stated in clause 23), then delay his right to claim transfer until an unspecified future date that is not recorded at all, given the provisions recorded in the deed of sale and the goal which the Applicants intends to achieve (namely, to take transfer of a half-share in agricultural land within Stellenbosch).

[56] For all the foregoing reasons, I reject Mr Karuaihe's primary argument. It does not overcome the prescription defence pleaded in the answering papers. I now consider Mr Karuaihe's alternative argument, being that the running of prescription was not completed by virtue of s 13(2) of the Prescription Act, or that prescription was interrupted as envisaged by s 14(1) thereof. For present purposes, these provisions are now quoted in full.

[57] Sections 13(2) and 14(1) read as follows:

'13. Completion of prescription delayed in certain circumstances.— ...

(2) A debt which arises from a contract and which would, but for the provisions of this subsection, become prescribed before a reciprocal debt which arises from the same contract becomes prescribed, shall not become prescribed before the reciprocal debt becomes prescribed. ...

14. Interruption of prescription by acknowledgement of liability.—

(1) The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor.'

[58] Section 13(2) does not prevent the running of prescription in any instance. As is evident from the heading to s 13 and s 13(2)'s contents itself, s 13(2) operates to prevent the completion of prescription: 'it serves merely to prevent prescription from taking its toll when the appropriate period has elapsed if there then happens to be in existence a reciprocal debt which is not yet prescribed' (*Minister of Public Works and Land Affairs and Another v Group Five Building Ltd* 1996 (4) SA 280 (A) at 288C).

[59] In casu, the three-year prescription period envisaged by s 11(d) has elapsed. Section 13(2) would only operate to prevent prescription from taking effect ('taking its toll') if the Applicant establishes that, arising from the deed of sale, there is, vis-a-vis-himself and the First Respondent, a 'reciprocal debt which is not yet prescribed'.

[60] In a contract, a reciprocal obligation is a performance owed by one contracting party to another in circumstances where the latter contracting party undertakes a counter-performance in exchange for a performance received. See *Ese Financial Services (Pty) Ltd v Cramer* 1973 (2) SA 805 (C) at 809D. A reciprocal duty between contracting parties in the sense explained here creates the kind of 'reciprocal debt' within the meaning of this term in the context of s 13(2) of the Prescription Act.

[61] The following dictum in *Minister of Public Works and Land Affairs v Group Five Building* supra at 288D usefully expounds on the notion of reciprocal debts in contract:

'Reciprocity of debt in law does not exist merely because the obligations which are claimed to be reciprocal arise from the same contract and each party is indebted in some way to the other. A far closer, and more immediate correlation than that is required.'

[62] For purposes of s 13(2), Mr Karuaihe relies on the duties arising from clauses 6.1 and 6.2 of the deed of sale (read with clause 2.4). He argues that the liability to the Stellenbosch municipality for arrear rates, taxes, and other local authority charges is a 'reciprocal debt' to which s 13(2) of the Prescription Act applies. I disagree.

[63] The deed of sale is a bilateral contract. In terms of clauses 6.1 and 6.2, the obligation to pay the arrear municipal charges is a joint debt of the Applicant and the First Respondent. The Applicant, as purchaser, and First Respondent, as seller and property owner, agreed to be jointly liable to pay the arrear charges to the Stellenbosch municipality. This is not a reciprocal obligation which the one contractant owes to the other. Therefore, the contractual duty resting on Applicant

and the First Respondent to contribute to the settlement of the arrear municipal account is not a 'reciprocal debt' within the meaning and contemplation of s 13(2) of the Prescription Act.

[64] Concerning s 14(1) of the Prescription Act, Mr Karuaihe contends that the Applicant's payments to the Stellenbosch municipality during the period 2016 to 2021 interrupted the running of prescription. I disagree. It is inconceivable that the First Respondent, either explicitly or implicitly, acknowledged a liability owed by him, as debtor, to the Applicant, as creditor, resulting from the deed of sale, based on the Applicants' numerous payments to the local authority over the course of five years totalling R20 570,000, both on an individual and collective payment basis. In this regard, I also agree with Mr Vorster SC who pointed out that the pleadings are devoid of an iota of evidence which indicate that the First Respondent was even aware that the Applicant made the various payment relied on by Mr Karuaihe for purposes of this argument rooted in s 14(1) of the Prescription Act.

[65] For all these reasons, the Applicant has failed to establish facts from which it may be justifiably found that s 13(2) or s 14(1) of the Prescription Act finds application.

Costs

[66] There is no reason why costs ought not to follow the result. At the hearing, the debate was on the scale to be ordered for counsel's fees. Mr Vorster SC contended that Scale C ought to be used because he is a silk and a costs' creditor ought not to be unnecessarily out of pocket with counsel's fees. Mr Karuaihe, on the other hand, contended that Scale B was more appropriate in the circumstances of this case. He argued that the issues at stake in the application viewed as a whole were not complex at all, or that any complexity it may have was not of such a nature as to warrant senior counsel. I agree.

[67] The First Respondent litigated in luxury by appointing a silk, and then too appointing one from another Province, thereby increasing his costs even further. This matter was relatively uncomplicated: it concerned a run-of-the mill application to

enforce compliance with the provisions of a deed of alienation concerning certain land. On the pleadings read as a whole, there were no issues raised which were of such high complexity that it required the forensic skills or other expertise which a senior counsel ordinarily brings to bear on a matter.

[68] It would be unreasonable if the Applicant were saddled with increased party-and-party costs which could have been reduced by the First Respondent appointing a suitably experienced junior counsel. Speaking proverbially, litigants ought to choose the right horse for the right course. This was not done here. In the circumstances, counsel's fees shall be allowed on tariff scale B.

Order

[69] In the result, the following order is made:

[69.1] The application is dismissed with costs. Counsel's fees are allowed on scale B.

F. MOOSA
ACTING JUDGE OF THE HIGH COURT

Appearances

For Applicant: JRS Karuaihe
Instructed by: JJV Attorneys Inc

For First Respondent: J Vorster SC
Instructed by: Faure & Faure Attorneys (Mr L Fortuin)