IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

CASE NO: 4107/2024

1. REPORTABLE: YES/ NO
2. OF INTEREST TO OTHER JUDGES: YES/NO
3. REVISED. YES/NO

28 August 2025 ____________

DATE SIGNATURE

In the matter between:

SONJA GOUWS **APPLICANT**

and

BOSODI PETRUS THOBEJANE **RESPONDENT**

JUDGMENT

Msibi AJ

[1] In this application, the applicant seeks an order to compel the respondent to sign all the necessary transfer documents and to take all the necessary steps to cause the transfer of a property known as Plot 8[…], P[...], L[…] 3[...] J.T., Mpumalanga ("the property") into the name of the applicant. In the event that the respondent fails to comply with the court order as granted, the Sheriff of the Court be authorised and

ordered to sign such documentation on the respondent’s behalf, and take all the necessary steps to see to it that the abovementioned property is transferred into the name of the applicant.

[2] The applicant alleges in her founding affidavit that on 16 May 2022, she entered into a written agreement of sale with the respondent in terms of which the respondent sold the property to her. She paid the purchase price, but the property was never transferred into her name. The applicant has thus approached this court to compel the respondent to transfer the property to her.

[3] The respondent does not deny having signed an agreement of sale with the applicant in respect of the property. He alleges that even if it can be found that he signed the agreement, it is invalid since his wife did not sign as she was supposed to. In his heads of argument, the respondent’s counsel raised further issues on the law in relation to non-joinder of the respondent’s wife and the validity of the purported agreement, which I shall deal with later in this judgment.

Background facts

[4] The undisputed facts are as follows: On 16 May 2022, the applicant offered to purchase 36 hectares of land (erf no. 8[..], Farm P[...] 30 J.T) for R1 100 000.00, which the respondent accepted. Both parties signed and initialled the agreement (marked S1). A second offer to purchase was signed by both parties on 16 July 2022 due to the applicant’s delay in making the payment under the first agreement. On 21 July 2022, the applicant made a payment of R800 000.00 into the transferring attorney’s account.

[5] The respondent allowed the applicant and her husband to occupy and renovate the vacant property, which had one inhabitable structure. They repaired stolen electrical and plumbing systems, installed a water tank and septic tank, built an additional flat, and rebuilt the vandalised pigsty.

[6] In February 2023, the applicant asked for an extension of time regarding the outstanding payment due to financial constraints. The respondent gave her the extension of time but indicated that she was supposed to pay before the end of May 2023. On 18 May 2023, the applicant paid the outstanding amount of R300 000.00. The applicant's attorney informed the respondent's transferring attorney, Mr Barnard, on 18 May 2023 and on 23 May 2023 that the applicant had paid the outstanding amount.

[7] The respondent's attorney requested the relevant documents from the respondent in order to effect the registration of the property into the applicant's name. There was no response from the respondent. Mr Barnard sent him another letter acknowledging the copy of the title deed, asking for the original. In the same letter, he asked the respondent to come to his office. There was still no reply. Mr. Barnard sent the respondent another letter on 5 June 2023, asking him to respond to his previous letters or indicate the date which would suit him to come to his office

[8] The respondent visited Mr Barnard on 4 July 2023 and expressed his intention not to proceed with the sale transaction, adding that he would need to first speak to his wife. He made an undertaking to return to the attorney's office on 10 July 2023. On 10 July 2023, the respondent arrived at Mr Barnard's office in the company of his attorney, Mr Opperman and his alleged wife. Mr Barnard was told that the applicant should actually pay more towards the sale of the property.

[9] Seeing that the respondent had expressed his refusal to proceed with the registration of the property in her name, despite payment of the full purchase price, the applicant approached Heroldt Attorneys, who launched the current application on her behalf.

[10] In his answering affidavit, the respondent averred the following:

10.1 That the property forms part of a joint estate with his wife, who ought to have been joined in these proceedings.

10.2 That he communicated to the conveyancer his intention to cancel the agreement with the applicant, in that she failed to fulfil the terms of the agreement, despite having been granted an extension on two occasions. It is common cause that this was communicated only after the applicant had paid the outstanding balance.

Issues

[11] In light of the fact that most facts are common cause, the following are the pertinent issues for determination in this application:

11.1 Whether the joinder of the respondent's wife is a requirement in these proceedings.

11.2 Whether the agreement is subject to cancellation since his alleged wife did not sign the agreement.

The law

[12] One of the points of law raised by the respondent's counsel in his heads of argument to the validity of the agreement is that the agreement does not comply with the requirement of section 6(1)(a) of the Alienation of Land Act 68 of 1981 ("the Alienation of Land Act") due to the failure to state the particulars of the second respondent in the agreement.

[13] The formalities for the sale of immovable property are set out in the Alienation of Land Act. The sections of that Act relevant for purposes of this judgment are sections 2 and 6, and they state the following:

> **"2. Formalities in respect of alienation of land** (1) No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.
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> **6. Contents of contract**

(1) A contract shall contain –

(a) the names of the purchaser and the seller and their residential or business addresses in the Republic."

[14] It is my view that the purported agreement does not comply with the formalities set out in section 2(1) read with section 6(1)(a) of the Alienation of Land Act. The identity of the parties to an agreement is one of the essential terms of an agreement in terms of the Alienation of Land Act. An agreement should, as a result, contain a sufficient description of the parties to that agreement. The complaint by the respondent's counsel is that the non-disclosure of the identity of the respondent's wife in the agreement invalidates it, and it therefore does not comply with the formalities required in terms of the Alienation of Land Act. And he is correct.

[15] Section 15 of the Matrimonial Property Act 88 of 1984, in particular section 15(9)(a), is at the centre of this issue. The relevant parts of the section are as follows:

"(1) Subject to the provisions of subsection (2), (3), and (7), a spouse in a marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.

(2) Such a spouse shall not without the written consent of the other spouse –

(a) alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate;

(b) enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;

…

(3) A spouse shall not without the consent of the other spouse –

(a) alienate, pledge or otherwise burden any furniture or other effects of the common household forming part of the joint estate;

(b) …

(c) donate to another person any asset of the joint estate or alienate such an asset without value, excluding an asset of which the donation or alienation does not and probably will not unreasonably prejudice the interest of the other spouse in the joint estate, and which is not contrary to the provisions of subsection (2) or paragraph (a) of this subsection.

…

(9) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2) or (3) of this section, or an order under sections 16(2), and –

(a) that person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions or that order, it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2) and (3), or while the power concerned of the spouse has not been suspended, as the case may be;

(b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the said subsection (2) or (3), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate."

[16] The Supreme Court of Appeal in *Vukeya v Ntshane and Others*,[1] dealt with a matter wherein a spouse who was married in community of property while in another town entered into a sale of another immovable property forming part of the joint estate without the knowledge of the other. The sale was discovered after the death of the seller by the surviving spouse. The High Court ruling in favour of the surviving spouse found that the sale was void *ab initio* and ordered that the registration thereof be set aside.

[17] The Supreme Court of Appeal found that the court *a quo* did not consider whether the appellant had brought himself within the protection afforded to third-party purchasers by section 15(9)(a). The Court found that the purchaser or appellant who did

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[1] *Vukeya v Ntshane and Others* [2020] ZASCA 167; 2022 (2) SA 452 (SCA).

not know of the existence of the marriage was entitled to protection under this section. The respondent was deemed to have consented to the sale, which was found to be valid and thus enforceable.

[18] At paragraph 10 of the same judgment, the Supreme Court of Appeal stated as follows:

> "[10] Recently, this Court in *Marais NO and Another v Maposa and Others*,[2] was seized with the deciding on the consequences of the failure to acquire consent in terms of s 15(3) of the MPA. In this regard this Court stated as follows:
> '[26] The effect of s 15 may be summarized as follows. First, as a general rule, a spouse married in community of property "may perform any juristic act in connection with the joint estate without the consent of the other spouse". Secondly, there are exceptions to the general rule. In terms of ss 15(2) and (3), a spouse "shall not" enter into any of the transactions listed in these subsections without the consent of the other spouse. Subject to what is said about the effect of s 15(9)(a), if a spouse does so the transaction is unlawful, and is void and unenforceable. This, it seems to me, flows from what Innes CJ, in *Schierhout v Minister of Justice*, called a "fundamental principle of our law", namely, that "a thing done contrary to the direct prohibition of the law is void and of no effect". Thirdly, if a listed transaction is entered into without the consent of the non-contracting spouse, that transaction will nonetheless be valid and enforceable if the third party did not know and could not reasonably have known of the lack of consent. While the consent requirement is designed to provide protection to the non-contracting spouse against maladministration of the joint estate by the contracting spouse, the "deemed consent" provision in s 15(9)(a) is intended to protect the interests of a bona fide third party who contracts with that spouse.
> [27] Section 15 thus seeks to strike a balance between the interests of a non-consenting spouse, on the other hand, and the bona fide third party on the other'."

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[2] *Marais NO and Another v Maposa and Others* [2020] ZASCA 23; 2020 (5) SA 111 (SCA).

[19] In *Mulaudzi v Mudau and Others*,[3] a spouse married in community of property sold immovable property without her partner's consent, claiming to be unmarried. The High Court found that the seller had presented herself as unmarried and subsequently ruled that under section 15(9)(a) of the Matrimonial Property Act, the sale was valid since the buyer was unaware, and could not reasonably have known, about the marriage. The Full Court disagreed and found that section 15(9)(a) found no application at all and set aside the order of the court of the first instance. The Supreme Court of Appeal found that section 15(9)(a) was central to the issue in this matter, further that even though the seller was factually married, and his spouse did not give consent, section 15(9)(a) protected the appellant. The sale transaction was deemed valid and enforceable. The order of the Full Court was set aside.

[20] Reverting to the facts of the matter before me, it is common cause that the respondent never indicated at the conclusion of the agreement that he was married. Paragraph 1 of the Offer to Purchase, dated 16 July 2022, provides as follows: "…if seller is a natural person please indicate the marital status". The respondent indicated that he was single by ticking in the appropriate box. The second paragraph that made provision for a spouse's details was crossed out, in line with the selection of his marital status.

[21] After the payment of the balance amount of R300 000.00 on 18 May 2023, the applicant communicated with the respondent through her attorney, seeking a date that would suit him for the signing of the transfer documents. Mr Opperman, the Estate Agent, or the respondent, informed the applicant's attorney that the respondent was no longer willing to sell the property to the applicant; he preferred to rent it to her instead. The respondent confirmed the same in person on 4 July 2023, adding that he needs to speak to his wife. On 10 July 2023, Mr Barnard received a visit from Mr Opperman, the respondent and his alleged wife. The respondent informed him that he was not proceeding with the agreement as it stood, and he needed more money.

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[3] *Mulaudzi v Mudau and Others* [2020] ZASCA 148.

[22] Mr Heroldt sent letters to the respondent's attorney stating that the applicant had fulfilled her obligations under the contract, erected structures, made improvements on the property, and moved in as a lawful occupier. He referred to clause 6 of the agreement, which outlines the procedure for breach or cancellation by either party. Accordingly, he indicated that the cancellation of the agreement was not consistent with the terms specified.

[23] On 12 March and 15 April 2024, the applicant's attorney sent a letter to the respondent's attorney requesting him to remedy his breach by signing the transfer documents; failing which, the applicant would approach the court for an order and seek punitive costs against him. After filing the application at hand, the applicant's attorney conducted a CSI Spousal Verification, Deeds Office Property search, and a Deeds Office Person search, which all indicated that the respondent was unmarried.

[24] Both parties have been legally represented at all times. Despite this, the respondent never stated that he was married in community of property during the signing of the sale agreement or that his wife needed to consent to the sale. He presented himself as being unmarried. After making the allegation, he was requested to produce proof of his marital status, but the respondent still failed to support his claim. He could not produce a marriage certificate, a lobola letter or a confirmatory affidavit from his alleged wife. His founding affidavit lacked particularity in this regard. The funds are still with the respondent's attorney; he has not returned or tendered to return same to the applicant. It is also of note that while in the company of Mr Opperman and his alleged wife, the respondent's main expressed concern was that the applicant should pay more than what was agreed upon.

[25] There is no evidence tendered by the respondent to dispute the applicant's averments pertaining to his marital status. His alleged spouse's names were not even averred or put on record during the application. Unlike the court's finding in *Mahlangu v*

Mahlangu and Another,[4] this Court cannot find that there has been a non-joinder of an interested party, nor that there are interests of a third party that need to be taken into account or protected. The point *in limine* has no basis or foundation; the consent of the alleged spouse is not required. The respondent's defence that he is married is, in fact, a bald and unsubstantiated allegation. This point *in limine* is therefore dismissed.

Specific Performance

[26] In *Farmers' Co-operative Society (Reg) v Berry*,[5] the court stated as follows:

> "Prima facie every party to a binding agreement who is ready to carry out his own obligation under it has a right to demand from the other party, so far as it is possible a performance of his undertaking in terms of the contract. …It is true that courts will exercise a discretion in determining whether or not decrees of specific performance should be made. They will not, of course, be issued where it is impossible for the defendant to comply with them. And there are many cases in which justice between the parties can be fully and conveniently done by an award of damages. But this is a different thing from saying that a defendant who has broken his undertaking has the option to purge his default by the payment of money. … 'it is against conscience that a party should have a right of election whether he would perform his contract or only pay damages for the breach of it.' The election is rather with the injured party, subject to the discretion of the Court."

[27] The applicant has performed fully within the terms of the agreement. She chose to seek performance by the respondent and not to seek damages. The respondent gave the applicant permission to move into the said property based on their agreement of sale. The applicant effected improvements in the property, and this will result in prejudice should the court order payment of damages, keeping in mind that the respondent never tendered to refund the applicant the funds that she paid.

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[4] *Mahlangu v Mahlangu and Another* [2020] ZAMPMHC 5.
[5] *Farmers' Co-operative Society (Reg) v Berry* 1912 AD 343 at 350.

[28] While specific performance is a primary remedy, the court has discretion to refuse it in cases where it is impossible or impractical to perform. Although an aggrieved party has a right to choose, the court has the final discretion on which remedy is most appropriate. There is nothing on record that suggests that there was a spouse or individual who had a direct or substantial interest in this application. This court finds, therefore, that the applicant has proven her claim on a balance of probabilities.

[29] It is my view that the respondent's alleged marriage was not defined at all, nor was his spouse identified. From the evidence before me, there is nothing that suggests that he was married at the time he entered into the agreement with the applicant. Even if it were to be found that he is married, the land sale agreement is, in terms of section 15(9)(a) of the Matrimonial Property Act, valid and legally enforceable.

[30] The general rule is that there can be no ratification of an agreement for the sale of immovable property unless, *ex facie* the document, the deed of sale complies with the requirements of the relevant statute. The agreement complies with the provisions of the Alienation of Land Act. It follows, therefore, that the applicant is entitled to the relief claimed.

Order

[31] In the premises, the application is granted in the following terms:

1. The respondent is hereby ordered to signal the necessary documentation in order to give transfer of the immovable property known as plot 8[…], P[...], L[…] 3[…] J.T., Mpumalanga, into the name of the applicant, within 14 days from the granting of this order.
2. In the event the respondent fails and/or refuses to sign the aforesaid documentation within 14 days from the granting of this order, the Sheriff of the above Honourable Court is authorised and ordered to sign such documentation on the respondent's behalf.

3. The respondent is to pay the costs of this application on the scale as between attorney and client.

4. The transferring attorney in this matter, Gerhard Lourens Attorneys, with offices in Nelspruit, is ordered not to pay out to the respondent any money or proceeds from the sale and transfer of the property until such time as the applicant's costs have been taxed.

5. The transferring attorney, as mentioned above, is further ordered to deduct the taxed costs of this application from the money paid into his trust account by the applicant for the property, and thereafter pay the remainder of any money out to the respondent within seven days after receipt of the Taxing Master's *allocatur*.

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ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

Appearances

For the applicant:	Adv. J D Mathee.
Instructed by:	Griesel Van Staden Inc. Pretoria.
	Pieter Nel Attorneys, Mbombela
For the respondent:	Adv
Instructed by:	T M Mokoena Attorneys Inc. Mbombela
Matter heard on:	24 July 2025
Judgment delivered on:	28 August 2025