IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION

MBOMBELA MAIN SEAT

CASE NO: 1777/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE:11/09/2025

SIGNATURE:

In the matter between:

JABULANE JUSTICE NKOSI	**APPLICANT**
and	
MANCOBA ALLY MABUZA	**FIRST RESPONDENT**
FRIDAY MAVUSO	**SECOND RESPONDENT**
AYANDA MELODY DLAMINI	**THIRD RESPONDENT**
DEEDS REGISTRY MPUMALANGA	**FOURTH RESPONDENT**

MBOMBELA MUNICIPALITY **FIFTH RESPONDENT**

JUDGMENT

MADAVHA AJ

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for the hand-down is deemed to be 11 September 2025 at 11H00.

INTRODUCTION

[1] The Applicant in this application seeks a declaratory order to be declared the lawful owner of 7[...] Extension 13, Emjindini, Mpumalanga (the property), as he alleges that he purchased the property from the First Respondent on 14 May 2019. The First Respondent has failed to effect the transfer of the property into the names of the Applicant and has sold it to the Second and Third Respondents.

[2] The Second and Third Respondents have opposed the application and have raised prescription as a point in limine. The First Respondent, however, did not oppose the application.

BACKGROUND

[3] The Applicant alleges that on or about 14 May 2019, he entered into a Deed of Sale agreement (Deed of Sale) with the First Respondent, in which he purchased the property. The purchase price of the stand was R100 000.00, which was subsequently paid to the First Respondent.

[4] The Deed of Sale attached by the Applicant specifies the terms and conditions of the sale, the purchase price, and the date of sale, which the Applicant alleges to have complied with.

[5] It was further agreed between the Applicant and the First Respondent that the First Respondent would stay in the house for three months while still making arrangements for alternative accommodation. However, after a month, the First Respondent lost his mother and was unable to move out within the agreed period due to financial constraints.

[6] A month after the three-month period expired, the Applicant, while passing by the house, noticed the Second and Third Respondents, who were busy renovating the house, claiming that they had bought it from the First Respondent.

[7] The First Respondent failed to transfer the stand into the Applicant's name. He later received confirmation that the Second and Third Respondents bought the same stand and that ownership had been transferred to them. The Deed of Transfer indicates that ownership was transferred to them on 19 July 2022.

[8] The Applicant subsequently laid charges of fraud against the First Respondent, who was convicted by the Barberton Magistrate's Court on 27 September 2023.

[9] The Second and Third Respondents oppose the application and raise prescription as a legal point. Furthermore, the sale agreement is unsigned and does not indicate the date on which the deed of sale was supposedly entered. If the court considers the date of payment as the date of signing the agreement, then the claim has prescribed.

[10] Regarding the prescription, the Respondents argue that if the sale agreement date is considered as 14 May 2019, the Applicant's right to claim transfer started on that date, 14 May 2019, and prescribed on 13 May 2022. When the Second and Third Respondent entered into the contract with the First Respondent, the Applicant no longer had a lawful claim to transfer the property, since their sale agreement took place on 11 July 2022. It is further contended by the Respondents that the Applicants' right to claim transfer is a "debt" under the Prescription Act No 68 of 1969, in terms of Section 11(d) of that Act.

[11] Although the sale agreement was silent as to when the transfer was to be effected, the Applicant should have brought an application to claim specific performance for the transfer of the property within a period of three years from the conclusion of the sale agreement.

COMMON CAUSE ISSUES

[12] It is not disputed that a Deed of Sale of the said property was concluded between the Applicant and the First Respondent, nor is the agreement between the First, Second and Third Respondents disputed.

[13] In terms of clause 2 of the attached Deed of Sale, "*possession of the property will be given to the Purchaser and the Purchaser shall be obliged to take possession thereof, on date of payment hereof from which date the Purchaser shall be liable for all municipal rates and taxes and/or fees payable on the property, and from which date the property shall be the sole risk, profit or loss of the Purchaser. Should the Seller have made any payment of such a nature for a period after the date of possession, he/she shall be entitled to a refund thereof pro-rata to the period of prepayment*." Clause 5.1 of the agreement states that *"a full payment of the purchase price shall be made to the seller's designated bank account on the day of the signing of the deed of sale of the property by the purchaser."*

[14] A few months after the conclusion of the Deed of Sale between the Applicant and First Respondent, he learnt that the Second and Third Respondents were renovating the said property and alleged that they had bought the property. Although the Applicant refers to the time he learnt of the said sale as being "after a period of three month", it appears that this was before the Deed of Transfer (between First, Second and Third Respondent) was concluded since the date of purchase as per the deed registration is 11 July 2022 and the Deed of Transfer was duly completed on the 19 July 2022.

ISSUES

[15] The issues for determination before this Court are whether the Applicant is the lawful owner of the property and entitled to the prayers sought, and whether the transfer of the property from the First Respondent to the Second and Third Respondents is valid, since it was concluded after the deed of sale between the Applicant and the First Respondent.

[16] The Court should also consider whether the fact that the parties do not sign the Deed of Sale has any significance or effect on the validity of the said agreement.

[17] It is common cause that if this Court considers the date of payment of the purchase price as the date of signing the agreement, then the Applicant's claim has become prescribed since more than three years have passed since the payment was made.

THE LAW

PRESCRIPTION ACT 68 1969

[18] Section 12 (1) of the Prescription Act provides,

> “12(1)Subject to the provisions of subsections (2) and (3), prescription shall commence to run as soon as the debt is due.
> (2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.
> (3) A debt which does not arise from a contract 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.

[19] The Applicant alleges that the contract of sale was concluded on 14 July 2019, the date on which he made the payment. The transfer of the property into his name was supposed to be effected from that date, meaning that his claim arose on that day, and he should have sought the transfer from then.

[20] The prescription begins immediately once a debt becomes due. However, if the debtor deliberately obstructs the creditor from discovering the debt's existence, prescription is suspended until the creditor becomes aware of the debt. Additionally, a debt is considered due until the creditor knows both the creditor's identity and the circumstances that give rise to the debt.

[21] In ***Rademeyer v Ferreira***[1] paragraph 38, Zondo CJ and others " *when a debt became due in this case requires this Court's attention, as it featured in Mr Rademeyer's argument-this question requires a consideration of when the damages were sustained. The meaning of "debt" was considered in* ***Allianz***[2]*, and approved in judgments such as* ***Cadac***[3]*,* ***Makate***[4]***,Desai N.O*** *and* ***Off-Beat Holiday Club.*** *These cases establish that a debt extends to any liability arising under a contract, which includes both the primary performance and the subsequent damages claim. Mr Ferreira's claim for damages flows from precisely the same breach of contract dealt with in the original application for specific performance. If follows that the damages were as a result of a breach of the contract and not as a result of non-compliance with the Pickering J order. While a breach (that is a failure to comply with the contractual obligations after being called upon to do so) triggers damages, a court order legitimates a claim for damages*."

DISCUSSION

[22] There is no dispute that a deed of sale was concluded between the Applicant and the First Respondent and that the Applicant fulfilled his obligations by making full payment towards the purchase price as per the agreement. As of 14 May 2019, the debt became due, and the Applicant should have enforced his rights. Instead, he opted to lay criminal charges of fraud against the First Respondent, an option that ultimately would not force the Respondent to comply with the contractual obligation, thereby transferring the property into his name.

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[1] (CCT 184/2022) [2024] ZACC 24; 2025 (1) BCLR 73 (CC); 2025 (2) SA

[2] Cape Town Municipality v Allianz Insurance Co Ltd 1990 (1) SA 311 (C)

[3] Cadac (Pty) Ltd v Weber Stephen Products Company [2010] ZASCA 105; 2011 (3) SA 570 (SCA)

[4] Makate v Vodacom (Pty) Ltd (2016) ZACC 13, 2016 (4) SA 121 (CC)

[23] When he found the Second and Third Respondent at the property, who informed him that they had purchased it, he should have enforced his rights instead of waiting for the claim to prescribe. Unfortunately, the Applicant paid the purchase price for the property, and the First Respondent then went on to sell it to the Second and Third Respondent.

[24] The issue raised by the Second and Third Respondents that the agreement is unsigned does not, in my view, hold water; it is in clear and certain terms in the agreement that "A full payment of the purchase price shall be made to seller's designated bank account on the day of the signing of the deed of sale by the purchaser." The full payment was as per the bank statement effected on 14 May 2019, a fact not disputed by the Second and Third Respondent. I can therefore conclude that the signing of the agreement or the date of the conclusion is 14 May 2019.

[25] Having reached the above conclusion, the Applicant's claim for contractual performance therefore arose at that date, with a period of three (3) years having elapsed by 13 May 2022. The Applicant was aware of the debt from the day he made payment and should have then sought to have the property transferred into his name.

[26] As such, the Applicant's claim has prescribed, and I uphold the Respondents' special plea (prescription).

[27] It is trite law that costs follow suit and that such an order is within the courts discretion, taking into consideration circumstances in this matter , each party shall bear its own costs.

[28] I accordingly make the following order:

1. The point in *limine* raised by the Second and Third Respondents, that of prescription, is hereby upheld.
2. The application is dismissed with no order as to costs.

M B MADAVHA

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Applicant: ADV MAKHANYA

INSTRUCTED BY: AJ NEMAKONDE ATTORNEYS

EMAIL: ajnattorneys@gmail.com

For the Second and Third Respondents: ADV LINDHOUT

REINER J OELOFSEN ATTORNEYS

EMAIL: litigation@rjattorneys.co.za

Date of hearing: 22 July 2025

Date of judgment: 11 September 2025