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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA**

CASE NO:

A224/2025

DOH: 05 MARCH 2025

DOJ: 09 SEPTEMBER

2025

- 1) REPORTABLE: NO
- 2) OF INTEREST TO OTHER JUDGES: NO
- 3) REVISED.

.....
SIGNATURE

09 September 2025
DATE

In the matter between:

ANNETTE VENTER

Respondent/Applicant

And

FIRST NATIONAL BANK (LTD)	First Respondent
ISINDA 116 (PTY) LTD	Second Respondent
GAVIN CECIL GAINSFORD N.O.	Third Respondent
SOPHIE THABANG KEKANA N.O.	Fourth Respondent
MONUMENT PARK 110 (Pty) Ltd	Appellant/ Fifth Respondent
REGISTRAR OF DEEDS, JOHANNESBURG	Sixth Respondent
NATIONAL CREDIT REGULATOR	Seventh Respondent
INVESTEC BANK Ltd	Eighth Respondent
REVERSE MORTGAGE CO. (Pty) Ltd	Ninth Respondent
ENVER MOHAMED MOTALA N.O.	Tenth Respondent
IZAK JOHANNES BOSHOF N.O	Eleventh Respondent
WEGELE STAFFORD McKENZIE	Twelfth Respondent
BRIDGEBOND FINANCE (deregistered)	Thirteenth Respondent
LEASK & PARTNERS	Fourteenth Respondent

This Judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 09 September 2025.

ORDER

1. The appeal is dismissed.
2. The respondent must pay the applicant's costs of appeal, the costs of the application for leave to appeal in the court *a quo* and leave to appeal in the Supreme Court of Appeal.

JUDGMENT

CORAM: BAM J (KUMALO and FRANCIS-SUBBIAH JJs concurring)

1. The present appeal concerns a fraudulent scheme perpetrated by the Reverse Mortgage Company (Pty) Ltd (RMC) and its associates upon the applicant (respondent on appeal). The court *a quo*, per Kwinana AJ, found for the applicant on a claim founded on *rei vindicatio* and ordered, *inter alia*, that the sixth respondent register the property described as Erf 2[...], Rant-en-Dal (the property) in the applicant's name within 1 month from date of the order. The fifth respondent (appellant), the only party who contested the claim, was ordered to pay the applicant's costs. The court *a quo* refused leave to appeal. The present appeal is with leave of the Supreme Court of Appeal per its order of 5 July 2023. The applicant is opposing the appeal. For convenience, I refer

to the parties as they were in the initial proceedings. Solely for convenience, I use the word respondent instead of Fifth Respondent.

Background

2. The applicant, 69 years at the time of instituting these proceedings in 2018, has been unemployed since 1996, due to ill health. She lives in a home rented by her daughter and her husband in Sydenham, Gqeberha, in the Eastern Cape. The house is occupied by eight people, including the applicant. In 2003, following the passing of her late husband, the applicant inherited the property that is the subject matter of these proceedings. She was evicted from the property in 2013 following an order obtained by the third and fourth respondents, the then liquidators of Isinda. Tracing the steps that led to her eviction, the applicant averred in her founding papers that she was looking for money to build a flat in order to generate income but she was turned down by banks. At the time, she had estimated the cost of building at about R 100 000.00.

3. In October 2006, she read an advertisement in the *Beeld* by a company called Reverse Mortgage Company (Pty) Ltd, RMC, offering loans to homeowners for improvements, university and school fees. The loans were to be backed by a reverse mortgage bond. She had previously read an article about reverse mortgages. The only conditions, she said, were that the homeowner must die 'sooner than later' and they must have equity in their property. A mortgage according to the applicant would be registered over the property to secure the

homeowner's indebtedness to the financial institution. The amount outstanding on the bond would be paid by the estate upon the passing of the homeowner.

4. She called the number advertised and spoke to a Stephan Pretorius, (Pretorius). Pretorius informed her that RMC would assist but that a valuation of her property was required. Two days after her home valuation, Pretorius requested a facsimile number to send documents for her to sign. The documents, according to the applicant, consisted of a memorandum of agreement, (MOA) and a quotation for a loan of R 100 000.00 payable in instalments over five years. Stephan explained that RMC does not pay the amount upfront but in the form of a 'pension' payable monthly. After speaking to Stephan, she concluded she would not be able to build the flat but she would at least receive income. Later, when the horse had long bolted, she learnt that the MOA entailed, amongst others, that she was selling her home to a shelf company.

5. In February 2007, Kobus van Rooyen, (van Rooyen) from RMC called and informed her that he had taken over from Stephan. He mentioned that her loan had been approved and that she was required to sign some documents. Van Rooyen sent papers by facsimile comprising a cover sheet and an 'agreement of purchase and sale'. Jolted into action by the information that her loan had been approved, the applicant says she threw caution to the wind and signed the papers without reading and sent them back. She reiterates that she had never intended to sell her property to RMC or Isinda or anyone.

6. On 23 February, in the same year, she received a further document from Meiring Kritzinger (Kritzinger) of RMC. This document was for bridging finance. Kritzinger explained to her that the document was to process the reverse mortgage. She completed it and sent it back to Kritzinger. Some time later, she was invited to attend at the offices of JG Horn Inc. Attorneys, in Pretoria, where she was required to sign forms. She says that no one explained anything to her before signing the papers. She later learnt that the papers were to effect transfer of her property.

7. After signing all the paper work, she never again heard from RMC. Her calls to them went unanswered and she never received any money. In January 2008, she received a letter from FNB Ltd, (FNB) informing her of the liquidation of Isinda, at the instance of FNB. The letter detailed the fraud perpetrated by RMC upon homeowners which often included evictions. She says she immediately informed FNB about her position and also went to lay criminal charges against RMC. In April 2013, the applicant was evicted from the property by a court order obtained by the liquidators of Isinda. Although she had filed opposing papers, she says she could not afford legal representation.

Proceedings in the court a quo

8. The court *a quo*, relying on the applicant's version and supporting documents, found for the applicant. The court accepted that the applicant was a victim of fraud and she had no intention of selling her property to RMC, Isinda or to

anyone else. The respondent's case founded mainly on the unsubstantiated claim that the applicant was merely suffering from buyer's remorse after having voluntarily sold her property, failed to persuade the court. Its defences of prescription, *res judicata*, and the fact that it was an arms length, *bona fide* purchaser found no favour with that court.

Respondent's case on appeal

9. Before us, the respondent attacked virtually all the court *a quo*'s findings starting with the finding that the applicant had been defrauded. It maintained that the applicant had voluntarily authorised, adding that even if there had been fraud, which it denied, it had no effect on the subsequent sale from Isinda to the respondent as an arms length, *bona fide* purchaser. It sought to assail the court *a quo*'s acceptance that the applicant's claim is founded on *rei vindicatio* and further raised the issue of prescription. Based on the eviction order of 2012, the respondent submitted such order had the effect of *res judicata* against the applicant's claim. The respondent submits that the court erred in granting paragraph 4¹ of the order, adding that the court *a quo* acted as a court of appeal. Finally, the respondent suggested that the court *a quo* ought to have determined the case on the basis of its version, as required by the Plascon Evans rule.

10. Perhaps, it may be convenient to begin by disposing of the contention pertaining to Plascon Evans. The Plascon Evans rule² applies only in the event of disputes of fact in motion proceedings. In the present case, there

¹ Paragraph 4 was a prayer to set aside, to the extent necessary, the eviction order of 2012.

² based on the case *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984).

were no disputes of fact in the court *a quo*. The respondent, in its affidavit deposed to by Vivian Vivier, avowed that the averments relied upon by the applicant fall outside his personal knowledge. For that reason, the respondent could neither admit nor deny the facts in the applicant's affidavit. As the record suggests, the respondent had not once placed evidence contradicting that of the applicant. The principle has no relevance to these proceedings and the point can be dismissed off hand at this early stage.

11. On the charge that the applicant had voluntarily signed the papers relating to the sale and transfer of her property to Isinda, this challenge is unsubstantiated. The respondent relies on the *caveat subscriptor* rule. I will demonstrate with reference to case law that in circumstances where fraud has been established, the rule finds no application. The facts of this case demonstrate that the applicant had called RMC to apply for a loan, with no intention to sell her property to anyone, including RMC and Isinda. However, the representatives of RMC, starting with Pretorius, to van Rooyen and Kritzinger, misled her as to the actual nature of the transaction she was concluding. When van Rooyen telephoned the applicant and announced that her loan had been approved inviting her to sign documents, the applicant believed that the documents were to give effect to the loan.

12. The same falsehood continued in the representation made by Kritzinger when he telephoned the applicant regarding the Bridging Finance document she was required to sign. The statements made by the applicant about what occurred when she went to the offices of J G Horn remain unchallenged. The

insistence by the respondent that the applicant should have asked is one thing, but it does not change the applicant's version that no one explained to her that the documents she signed were to execute the transfer of her property. She relied on the representations made by the representatives of RMC that she was obtaining a loan which was to be secured by a mortgage to be registered over her property. She later discovered that:

- (i) The MOA [that was sent by Pretorius] contemplated that there was to be a lease agreement between herself and a shelf company and she would have to pay rent to the shelf company;
- (ii) An outside director, referred to as a jockey, would be appointed to the shelf company. This person was to sign as surety on the mortgage [to be obtained using her property as security] for the repayment thereof;
- (iii) The jockey [surety] would earn 5% of the loan for 'services' rendered while RMC would receive 7.5% from the proceeds of the loan;
- (iv) The balance of the purchase price was to be paid to her.

13. Although the judgment accepts in the end that it is clear that the applicant was a victim of fraud, it does not make it clear that the features listed in paragraph 12 (i)-(iv) were discovered long after the horse had bolted. I shall revert to the features of the sale set out in paragraph 12. The court *a quo* was correct in its conclusion that the applicant had been a victim of fraud.

14. The respondent further says, even if fraud had been established, it had no effect on the subsequent sale between it and the liquidators of Isinda. With this contention, the respondent asserts that it acquired ownership of the applicant's property. But such contention cannot be accepted. There is a long line of decisions emanating from our senior courts which deal pertinently with

this issue. These cases simply underscore the well entrenched maxim, *nemo plus iuris ad alium transferre potest quam ipse haberet*, which literally translates to, 'No one can transfer more rights than he himself has.'

15. One such case is *Quartermark Investments (Pty) Ltd v Mkhwanazi and Another*³, Ms Mkhwanazi had applied for a loan from Quartermark to meet her overdue home loan and vehicle instalments. Her version, as accepted by the court, was that she was tricked into signing documents she believed were to give effect to a loan using her home as security. In fact, the papers she had signed were for the sale and transfer of her property to Quartermark. Two questions had to be answered on appeal. They were, (i) whether Ms Mkhwanazi had made out a case of fraudulent misrepresentation, and (ii) whether the high court was correct in directing that the property be transferred to her despite her failure to tender restoration of the benefit she received under the agreement.

16. On the first issue, the court reasoned:

'[23] It is clear from Ms Mkhwanazi's evidence, which stands uncontradicted, that she had no intention to transfer ownership of the property to Quartermark. She was fraudulently induced to sign the sale agreement as well as the documents authorising transfer of the property to Quartermark.'

17. On the second issue, the court noted:

'[24] [T]he passing of ownership only takes place when there has been delivery effected by registration of transfer coupled with what Brand JA, writing for the

³ (768/2012) [2013] ZASCA 150; [2014] 1 All SA 22 (SCA); 2014 (3) SA 96 (SCA) (1 November 2013).

court in *Legator McKenna*, referred to as a 'real agreement'. The learned judge explained that 'the essential elements of the real agreement are an intention on the part of the transferor to transfer ownership and the intention of the transferee to become the owner of the property.

[25] As has already been mentioned, a valid underlying agreement to pass ownership, such as in this instance, a contract of sale, is not required. However, where such underlying transaction is tainted by fraud, ownership will not pass despite registration of transfer.'

18. The court further held that.

'[26] A party that proceeds by way of the *rei vindicatio* need not tender restitution of what has been received pursuant to a contract sought to be set aside, because the cause of action is complete without such tender.'

19. The legal principles espoused in *Mkhwanazi*, which are binding to this court, make it clear that the contentions made by the respondent that the applicant had lost ownership of her home at first, to Isinda, and thereafter, to the respondent when the property was sold by the liquidators of Isinda, must be rejected. To be clear, the applicant never lost ownership of her property because, as the authorities demonstrate, the real agreement had been vitiated by the fraud as the applicant had no intention of selling her home to RMC or Isinda or to anyone.

20. To buttress its claims that it had lawfully acquired ownership as a *bona fide*, arms length purchaser for value, at a public auction, the respondent

places reliance on *Knox v Mofokeng and Others*⁴, a decision of this Division. *Knox* is of no assistance because it dealt with the rights of a *bona fide* purchaser of property at sale in execution where, the judgment, on the strength of which the sale in execution was pursued, had been subsequently rescinded. *Knox* was not concerned with a sale and transfer of immovable property based on fraudulent misrepresentations.

21. In *Absa v Moore*⁵, a case that is comparable to the present, which the respondent dismissed without more as distinguishable, the Moores (husband and wife) were caught in the fraudulent Brusson scheme. They signed a set of documents believing that they were to process a loan they had applied for. As in the case of the applicant, the Moores had no creditworthiness. They could not find help with conventional financial institutions, which is what led them to the likes of Brusson. The Moores later found out that the documents they had signed comprised an agreement to sell their property and further authorised transfer to one Mr Kabini Soniboy. In accepting that the Moores were victims of fraud, the court identified what it said were foreign and unusual features in the transactions concluded by the Moores, which are not found in a *bona fide* agreements of purchase and sale. These are captured in the judgment as:

‘The investor does not really intend buying the property and never takes occupation; the client does not really intend selling the property and does not lose occupation; the investor pays nothing, but applies for a bond over the property as he has a good credit rating; the price payable in terms of the instalment sale agreement accrues not to the investor but to Brusson; all payments are made to

⁴ *Knox v Mofokeng and Others* (2011/33437) [2012] ZAGPJHC 23; 2013 (4) SA 46 (GSJ) (30 January 2012).

⁵ [2015] ZASCA 171; 2016 (3) SA 97 (SCA) (26 November 2015).

Brusson; in the event of default by the clients, Brusson is entitled to take transfer of the property.’⁶

22. Kabini, as the Moores later discovered, had successfully applied for a loan from Absa and purportedly authorised a mortgage to be registered over their home. The court’s findings in response to the contentions raised by Absa on appeal are instructive. Absa contended that: (i) It advanced an amount of R480 000 to Kabini in good faith against the security of the bond and that the bond stands independently of the invalid transactions. (ii) Absa raised the issue of *caveat subscriptor*, suggesting that the Moores had ample time to read the documents they signed. They could not therefore argue that the documents do not reflect common consensus. Dismissing both arguments the court held:

‘The court a quo found that the transfer was nonetheless invalid, and that the bond was also invalid given that the Moores had not intended to transfer their property to anyone, let alone Mr Kabini. It relied in this regard on *Nedbank v Mendelow* 2013 (6) SA 130 (SCA) where I held (paras 13 and 14):

‘This court has recently reaffirmed the principle that where there is no real intention to transfer ownership on the part of the owner or one of the owners, then a purported registration of transfer (and likewise the registration of any other real right, such as a mortgage bond) has no effect.....’⁷

23. The court noted that the principle of *caveat subscriptor* finds no application in the face of fraud. Extrapolating the principles espoused in *Absa* and applying them to the present case, the subsequent transfer of the applicant’s property by the liquidators of Isinda to the respondent is of no

⁶ footnote 4, paragraph 24.

⁷ *Id*, paragraph 36.

effect. Isinda had never acquired ownership. The liquidators of Isinda could not transfer what Isinda did not have. Likewise, the mortgage registered in favour of Investec has no legal effect as Isinda had no authority to register a bond. [See also *Meintjes NO v Coetzer and Others*⁸; *Gainsford NO and Others v Tiffski Property Investments (Pty) Ltd and Others*⁹].

24. I had earlier mentioned that I would come back to the features listed in paragraph 12(i) -(iv) of this judgment. Those features, of jockeys being paid a cut from what were to be proceeds of the mortgage for ‘services’ rendered and RMC receiving receiving a percentage from the same proceeds are foreign to *bona fide* agreements of purchase and sale of immovable property. They support strongly, the conclusion that the applicant was indeed defrauded by RMC and its associates.

Prescription

25. This defence was not properly pleaded. What the respondent says in its answering affidavit is:

‘It is clear from the founding affidavit that the applicant was aware by February 2011, of the facts, which if established would lead to a valid claim by her for retransfer of the property by Isinda to her’.

What those facts are, the respondent failed to point out. It is trite that the respondent/defendant bears the full evidentiary burden to prove a plea of

⁸ (089/09) [2010] ZASCA 32; 2010 (5) SA 186 (SCA) ; [2010] 4 All SA 34 (SCA) (29 March 2010), paragraphs 8 to 9.

⁹ (874/2010) [2011] ZASCA 187; [2011] 4 All SA 445 (SCA); 2012 (3) SA 35 (SCA) (30 September 2011), paragraphs 38-39.

prescription¹⁰. In any event, the respondent appears to equate the applicant's claim with a debt. The defence could not avail the respondent as prescription on a vindicatory claim is thirty (30) years and not three (3) years. The *dicta* in *Absa Bank Limited v Keet*¹¹, is instructive:

'[24] [A] vindicatory claim, because it is a claim based on ownership of a thing, cannot be described as a debt as envisaged by the Prescription Act. The high court in Staegemann (para 16) was correct to say that the solution to the problem of the prescription is to be found in the basic distinction in our law between a real right (*jus in re*) and a personal right (*jus in personam*). Real rights are primarily concerned with the relationship between a person and a thing and personal rights are concerned with a relationship between two persons. The person who is entitled to a real right over a thing can, by way of vindicatory action, claim that thing from any individual who interferes with his right. Such a right is the right of ownership. If, however, the right is not an absolute, but a relative right to a thing, so that it can only be enforced against a determined individual or a class of individuals, then it is a personal right.

[25] In the circumstances, the view that the vindicatory action is a 'debt' as contemplated by the Prescription Act which prescribes after three years is, in my opinion, contrary to the scheme of the Act..¹²

The court a quo correctly rejected the defence.

Res judicata

26. The respondent submits that the eviction order granted against the applicant had the effect of *res judicata* on her claim of *rei vindicatio*. The *rationale* behind the legal doctrine of *res judicata* is to bar 'continued litigation

¹⁰ *Jugwanth v Mobile Telephone Networks (Pty) Ltd* (529/2020) [2021] ZASCA 114; [2021] 4 All SA 346 (SCA) (9 September 2021).

¹¹ (817/2013) [2015] ZASCA 81; 2015 (4) SA 474 (SCA); [2015] 4 All SA 1 (SCA) (28 May 2015).

¹² *id.*, paragraphs 24-25.

of the same case, on the same issues, between the same parties¹³. In *National Sorghum Breweries (Pty) Limited t/a Vivo Africa Breweries v International Liquor Distributors (Pty) Limited*, the principle was explained thus:

[2] The requirements for a successful reliance on the *exceptio* were, and still are: *idem actor*, *idem reus*, *eadem res* and *eadem causa petendi*. This means that the *exceptio* can be raised by a defendant in a later suit against a plaintiff who is “demanding the same thing on the same ground”; or which comes to the same thing, “on the same cause for the same relief”; or which also comes to the same thing, whether the “same issue” had been adjudicated upon.’

[3] The fundamental question in the appeal is whether the same issue is involved in the two actions: in other words, is the same thing demanded on the same ground, or, which comes to the same, is the same relief claimed on the same cause, or, to put it more succinctly, has the same issue now before the court been finally disposed of in the first action?’¹⁴ (References omitted)

27. The respondent was not a party to the eviction proceedings. The applicant in these proceedings seeks a declaratory order that she is the owner of the property. Her case is founded on *rei vindicatio*. The issue now before the court has not been fully disposed of in previous proceedings. That means the defence must fail.

The court erred in granting paragraph 4 of the draft order marked ‘X’

28. This submission is directed at the order granted by the court setting aside the eviction order of 2012. The respondent submits that the court *a quo* acted as a court of appeal in setting aside the eviction order. I disagree that

¹³ *Mkhize NO v Premier of the Province of KwaZulu-Natal and Others* (CCT285/17) [2018] ZACC 50; 2019 (3) BCLR 360 (CC) (6 December 2018), paragraph 36.

¹⁴ (72/99) [2000] ZASCA 70; 2001 (2) SA 232 (SCA); [2001] 1 All SA 417 (A) (28 November 2000).

the court acted as a court of appeal in granting the order. This is so because, as soon as the agreement of purchase and sale between the applicant and Isinda was set aside, the basis upon which Isinda and by extension its liquidators, evicted the applicant from the property no longer existed. Secondly, had the court not set aside the eviction order, it would have undermined its vindicatory order as the applicant would still be prevented from using and enjoying the property. On this score, the court was not only entitled but obliged to set the eviction order aside. In *Eke v Parsons*¹⁵, the court confirmed that the High Courts have an inherent duty to regulate their own proceedings to ensure effective administration of justice. The court *a quo* gave effect to this duty in setting aside the eviction order to ensure that its own order is not undermined. I find no impropriety in such conduct.

Conclusion

29. Based on all the reasoning in this judgment, the appeal must accordingly fail.

Order

1. The appeal is dismissed.
2. The respondent must pay the applicant's costs of appeal, the costs of the application for leave to appeal in the court *a quo* and for petitioning the Supreme Court of Appeal.

¹⁵ (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015).

BAM J

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

I agree

KUMALO J

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

I agree

FRANCIS-SUBBIAH J

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Date of Hearing:

05 March 2025

Date of Judgment:

09 September 2025

Appearances:

Applicants' Counsel:

Adv M.S Manganye

Instructed by:

M A Maluleke Attorneys
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