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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Case Number: 075714/2025

- (1) REPORTABLE:
- (2) OF INTEREST TO OTHER JUDGES:
- (3) REVISED:

In the matter between:

K[...] S[...]

Applicant

And

K[...] S[...]

First Respondent

**THE UNLAWFUL OCCUPIERS OF THE IMMOVABLE
PROPERTY AT PORTION 3[...] S[...] PLACE, B[...]
V[...] GOLF ESTATE, MIDRAND**

Second Respondent

**BLUE VALLEY GOLF ESTATE
HOMEOWNERS ASSOCIATIONS**

Third Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 17 October 2025.

JUDGMENT

BOTSI-THULARE AJ

Introduction

- [1] This is an application for reconsideration of two court orders granted on an urgent basis on 24 May 2025 (Strijdom J Order) and 29 May 2025 (Mooki J Contempt Order). The reconsideration application is brought by Mr Mabena, the second respondent, in terms of rule 6(12)(c) of the Uniform Rules of Court. The Strijdom J Order includes the rule nisi sought to be made final by the applicant.
- [2] The second respondent argues that the Strijdom J Order was obtained *ex parte* against him and on the basis of false information provided to the court by the applicant. Furthermore, the Mooki J Contempt Order was also obtained in the absence of the second respondent and on the basis of false information provided to the court.
- [3] In a nutshell, the applicant submits that both Court Orders were granted erroneously for various procedural and substantive reasons. Accordingly, this court ought to exercise the wide discretion that it has in such matters to set aside both Court Orders. Lastly, the rule nisi ought not to be made final.

- [4] As her grounds for opposition of the reconsideration application, the applicant argues that it must be stated that there were two options available to the second respondent to oppose the Strijdom J Order. First, the second respondent was supposed to have filed an affidavit showing cause why the Strijdom Order should not be made final. Instead, the second respondent chose to launch a separate reconsideration application, which the applicant opposes.
- [5] Before dealing with the issues that arise from the above, it is apposite to first provide a summary of the facts leading up to this reconsideration application.

Factual background

- [6] In 2013, the applicant and the first respondent purchased the stand known as 3[...] S[...] Place, B[...] V[...] G[...] E[...], M[...] (the Property). The applicant and first respondent were married to each other in community of property on 25 April 2014, which marriage currently still exists. However, their marriage is subject of the pending divorce proceedings which were initiated by the applicant on 14 June 2019.
- [7] In January 2025, the second respondent noticed that the Property was advertised as being up for sale. After inspecting the property on no less than four occasions, the second respondent offered to purchase the Property. It should be noted that the second respondent did not offer to purchase the Property in his personal capacity. He indicated that he was purchasing the Property on behalf of a private company known as the Industrial Butcher (Pty) Limited (Industrial Butcher). Hence, the Property was transferred into the name of the Industrial Butcher on 23 May 2025. On the same day, the first and

second respondents started making arrangements for the second respondent to move into the property.

[8] The applicant was not aware of the sale of the Property to the second respondent. According to the applicant the sale of the property by the first respondent without her knowledge was nothing else but fraud committed by the first respondent. The applicant contended that the first respondent's fraudulent intent is corroborated by the fact that he indicated on the offer to purchase that he is unmarried. Further, this was clearly done to evade the obligation to obtain marital consent to sell the property as required by section 15 of the Matrimonial Property Act as they were married in community of property and joined owners of the Property.

[9] The second respondent was unable to move into the property on 23 May 2025 despite having made arrangements with the first respondent. The reason for this was that the belongings of the applicant and first respondent were still in the Property. Ultimately, the second respondent managed to move into the Property on 24 May 2025.

[10] On the same day, the applicant launched an urgent *ex parte* application in this court (Urgent Application). The Urgent Application came before Strijdom J. Strijdom J granted the Urgent Application in favour of the applicant in the following terms (the Strijdom Order):

- a. Pending the finalisation of the application, the applicant may not be removed from the Property;

- b. Neither the first nor second respondent may remove the applicant or her furniture from the Property;
- c. The second respondent may not be allowed to move in to the Property, pending the finalisation of the application; and
- d. The Blue Valley Homeowners Association must restore the applicant's access at the security gate.

[11] On 26 May 2025 the second respondent's attorneys, after confirming that their client received the Strijdom Order on the evening of 25 May 2025, requested a copy of the entire application, which was subsequently sent to them by the applicant's erstwhile attorneys of record. On 27 May 2025 the applicant's attorneys sought confirmation from the second respondent's attorneys if they are going to comply with the Strijdom Order or not.

[12] The next day, the second respondent's attorneys confirmed receipt of the Strijdom Order with the applicant's attorneys and stated that they are taking instructions from their client. No tender of compliance was made on behalf of second respondent.

[13] Therefore, the applicant launched an urgent contempt application (Urgent Contempt Application), which was also served on the second respondent by way of email addressed to his attorneys. The Urgent Contempt Application was heard *ex parte* by Mooki J.

[14] On 29 May 2025, Mooki J granted an order declaring the first and second respondents in contempt of paragraphs 3, 4, 5 and 6 of the Strijdom Order. It was also ordered that the first and second respondents must comply with

paragraph 5 of the Strijdom Order within 24 hours (Mooki J Contempt Order). For the sake of clarity, paragraph 5 was the order prohibiting the second respondent from moving into the property pending the finalisation of the applicant's application.

[15] The Mooki J Contempt Order was emailed to the second respondent's attorney of record on the same day it was obtained by the applicant (i.e. on 29 May 2015). On 30 May 2025, the second respondent launched an urgent application to suspend the operation of the Mooki J Contempt Order. On 31 May 2025, Potterill J granted the order for the suspension of the Mooki J Contempt Order pending the finalisation of a reconsideration application, which the second respondent had to institute by 3 June 2025 (Potterill J Order).

[16] On 3 June 2025, the second respondent launched the reconsideration application in terms of which he seeks to reconsider and set aside the Strijdom J Order and, as a consequent, Mooki J Contempt Order.

[17] It is common cause that the second respondent had already moved into the Property before the granting of the Strijdom J Order. In other words, the second respondent continued occupying the Property despite the Strijdom J Order. Because of this reality, it appears that the applicant and second respondent continued having to issues outside of the reconsideration application. In this regard, on 19 June 2025 the applicant obtained an interim protection order in terms of section 3(2) of the Protection from Harassment Act 17 of 2011, against the second respondent (Interim Protection Order).

[18] On 19 July 2025, the second respondent was arrested. This was because of him being in breach of the Interim Protection Order. On 20 July 2025, the

second respondent then launched an urgent application for the order of the release of the second respondent from custody. On the same day, Teffo J ordered that the second respondent must be released from custody (Teffo J Order). She also ordered that the Interim Protection Order be suspended until 29 July 2025.

[19] With only the Mooki J Contempt Order being suspended by Potterill J, and having due regard to the fact that the second respondent moved into the property in contravention of the Strijdom J Order, which remained valid, binding, and enforceable, a warrant of eviction was issued, whereafter the second respondent launched an application in terms of which he sought relief that the execution of the Strijdom J Order be stayed and suspended pending the finalisation of the reconsideration application and/or the return date of the order being 25 September 2025.

[20] Prior to the hearing of the reconsideration application, the applicant obtained a writ of execution of the eviction of the second respondent from the Property based on the Strijdom J Order. The second respondent then launched an urgent application in which he sought an order interdicting the applicant from enforcing a writ of ejectment for the eviction of the second respondent from the Property.

[21] This urgent application was heard by Swanepoel J on 13 September 2025. On the same day, Swanepoel J made an order in the following terms:

“[1.1] The status quo in respect of Erf 3[...] B[...] V[...] G[...] E[...] (“the property”) shall be maintained pending the hearing of the matter on 25 September 2025;

[1.2] No person may evict the current occupiers of the property;

[1.3] Time periods were set for the filing of papers in anticipation of the hearing on 25 September;

[1.4] Costs were reserved.”

[22] Swanepoel J provided the reasons for his order on 26 September 2025. In his reasons, Swanepoel J stated the following:

“[6] It was, in my view, appropriate to stay the writ for the following reasons:

[6.1] The Strijdom J order did not provide any legal basis for the applicant's eviction. It simply prohibited the eviction of the first respondent from the time when the order was granted onward, by which time the applicant had already taken occupation. The order most definitely did not justify the issuing of a writ of ejectment;

[6.2] The reconsideration application was imminent, at which time all of the issues would be ventilated and determined. It was not in anyone's interests to create more chaos by evicting a family shortly before the matter was to be heard.”

[23] On the same day that Swanepoel J provided the reasons for his order of 13 September 2025, the reconsideration application was heard on an urgent basis before this court. After hearing, this court directed that the applicant and second respondent's counsel make written submissions in closing argument by 3 October 2025 and 8 October 2025 respectively. What follows is the summary of the submissions made by counsel for both the applicant and second respondent.

Parties' Submissions

[24] The second respondent submits that this reconsideration application was instituted urgently out of an abundance of caution so that it could be enrolled

and determined on the same day as the return date for the Strijdom J Order. To this end, the second respondent argues if the reconsideration application is determined after the return date for the Strijdom J Order, then it will be rendered moot. It is therefore necessary to determine both the finality of the rule nisi in the Strijdom J Order and the reconsideration application on the same date.

[25] The second respondent submits when the Strijdom J Order was granted, the fact of second respondent's ownership of the Property was not placed before the court because the applicant was not aware of it at the time and because she chose to bring the application *ex parte*. Accordingly, had the court been aware of second respondent's ownership of the Property, it would not have granted the Strijdom J Order.

[26] Similarly, when the Mooki J Contempt Order was granted, the fact of second respondent's ownership of the Property was not placed before the Court because the Contempt Application was not served personally on second respondent at all hence the Mooki J Contempt Order was granted.

[27] On this basis, the second respondent submits that what is evident is the fact that each court that has been made aware of his ownership of the Property has found in second respondent's favour. In this regard, the second respondent pointed this court to the Potterill J Order, Teffo J Order and Swanepoel J Order.

[28] The second respondent argues that his family are innocent lawful occupiers of the Property who have been caught up in the dispute between the applicant and first respondent concerning the sale of the Property which the first

respondent bought before they were married in community of property, and which was sold by the bank due to non-payment of the bond.

[29] The second respondent submits that the true nature of applicant's complaint is that she has a claim against her soon to be ex-husband, such as for a portion of the proceeds of the sale of the Property, for damages, or for the setting aside of the registration of the Property. Instead of bringing any such claim or challenging the sale and registration of transfer of the property in any way in the more than six months since the transfer of the Property was registered, the applicant has repeatedly sought to unlawfully evict the second respondent and his family from the Property.

[30] The applicant has for more than six months pursued every avenue except a formal challenge to the sale of the Property to allow her to take occupation of the Property which, on Mr S[...]s version, was never her primary residence. The applicant does not currently have any right in law to occupy the Property.

[31] It is thus inappropriate for the applicant to ask the Court to infer fraud on the part of the second respondent in circumstances where no fraud is pleaded against him in any of the papers, or to imply that such fraud (if it had been pleaded and proven) could have any relevance to these proceedings.

[32] If the applicant is the victim of a fraudulent property sale then so is the second respondent. If fraud is eventually alleged and proved in duly instituted proceedings which challenge the lawfulness of the transfer of the property, then the Court will determine what impact, if any, such fraud will have on the sale of the property with due regard to the impact on the victims of the fraud. Similarly,

the attempts by counsel for the applicant to infer fraud on the part of Mr S[...] through reference to the pleadings filed in the divorce action are inappropriate.

[33] The second respondent bought the Property through Industrial Butcher (Pty) Ltd and is the lawful owner of the Property unless and until the sale of the Property and the Deed of Transfer are set aside and the Registrar of Deeds is ordered to amend his records accordingly.

[34] There is no action or application before any Court at this stage for an order permitting cancellation of the Deed of Transfer. Accordingly, the second respondent's ownership of the Property is incontrovertible. That, with respect, is the end of the matter. The second respondent has a clear right in law to occupy the Property because the second respondent owns it. The applicant has not demonstrated any right in law to occupy the Property. In those circumstances, the Eviction Order cannot be confirmed and both the Eviction Order and the Contempt Order must be reconsidered and set aside.

Applicant's submissions

[35] The applicant submits that it must be stated that the reconsideration application fails to make it out of the starting blocks because, as a basis to assert a right to occupy the Property and to reconsider the orders granted against him, the second respondent incorrectly asserts that he is the owner of the Property, when the evidence clearly demonstrates that the Industrial Butcher (Pty) Ltd bought and paid for the property and is currently the title holder.

[36] Insofar as the justification for bringing an *ex parte* application is concerned, the urgent founding affidavit clearly explains the necessity of bringing it without notice. This is contained in paragraph 5.7 of the founding affidavit, which reads

as follows: “the respondents were asked on numerous occasions to provide proof that the house was sold legally; instead, they refuse and want to apply force to remove myself and the minor children”

[37] Lastly, regarding the allegation that the applicant was not occupying the property, the applicant and her children were, in fact, occupying the property. Here the second respondent faces the fundamental difficulty that he must concede that he has no personal knowledge of the living arrangements of the applicant, first respondent, and their minor children before 23 May 2025.

[38] To substantiate this ground, the second respondent entirely relies on the version of the first respondent, who, as has been demonstrated above, is a fraudster who has no qualm lying under oath and has been conniving to reach his ultimate goal, which is for the applicant to forfeit her interests in the property that serves as their children’s primary residence.

[39] The second fundamental difficulty on this ground is that because there is a factual dispute (i.e., the applicant contends that she occupied the property with her children), *Plascon Evans* requires the court to accept the applicant's version in the face of a genuine factual dispute.

[40] The applicant submits that should there be any factual disputes, those disputes must be resolved with the application of the principles in the well-known judgment of *Plascon-Evans*, which obliges the court, in the absence of a version by the applicant that is capable of being rejected on the papers, to accept the applicant's version of the facts.

[41] Consequently, all the grounds raised by the second respondent as to why the Strijdom J Order should be reconsidered are without merit and stand to be rejected completely.

[42] The applicant submits that the basis for impeaching the Mooki J Contempt Order was twofold. One, the Strijdom J Order was not served on the second respondent. Two, the order is egregious because it allows all occupiers to be present, which would include the second respondent's wife and children.

[43] The uncontested facts demonstrate that at this juncture there were still belongings of the applicant and first respondent in the property, and despite an order preventing the second respondent from moving into the property, he persisted, nonetheless.

[44] Thus, the true facts demonstrate that even on the second respondent's own version, he was in breach of a valid, binding, and enforceable court order when he persisted to move into the property despite being ordered not to do so. In careful scrutiny of all the affidavits filed on record, the second respondent proffers no explanation why, despite having knowledge of the Strijdom J Order, the day after it was granted, he proceeded to move into the property irrespective.

[45] Accordingly, the Mooki J Contempt Order cannot be reconsidered because it has been demonstrated that it came to the knowledge of the second respondent, and on his own version he was in wilful contempt of the order.

[46] The second important proposition is that the second respondent cannot now claim the benefit of his unlawful conduct by arguing that he has been in

occupation of the property for many months; therefore, it would inconvenience him and his family to vacate it. The difficulty for the second respondent is that he became an unlawful occupier of the property when he moved into it in contravention of a valid, binding, and enforceable court order that prohibited him from doing so. He cannot claim a benefit of his contemptuous conduct. One pauses to mention that the Strijdom J Order was only suspended in September 2025.

[47] The reconsideration application stands to be dismissed with costs. The Strijdom J Order was justified in all respects, and the Mooki J Contempt Order was equally justified since the second respondent was in contempt of the Strijdom J Order.

[48] In the interest of justice, bearing in mind that there are minor children involved on both sides, it is submitted that both orders, upon being confirmed, must be qualified or suspended for at least 30 days (which can be extended to the extent that the court wishes to do so, having due regard to the interests of the minor children) to allow the second respondent to obtain alternative accommodation. This has been provided for in the applicant's proposed draft order.

Issues

[49] Against this background, this court is required to resolve the following issues:

- a. Whether the reconsideration application is urgent.
- b. If so, whether the Strijdom J Order, and by extension, the Mooki J Contempt Order, should be reconsidered and set aside.

[50] I deal with each of the issues, as well as other ancillary issues, below.

Whether the reconsideration application is urgent

[51] The fundamental feature of our justice system is the *audi alteram partem* rule which is trite in our law. This maxim is derived from Latin and it means let the other side be heard as well. That said, however, our legal system provides for occasions when this principle may, in the interests of justice, be overlooked temporarily. It is for this reason that rule 6(12)(a) of the Uniform Rules of Court is sometimes invoked in with respect to abridgment of time limits prescribed by the rules.

[52] Rule (6)(12)(a) provides as follows:

“In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.”

[53] In urgent applications, brought in terms of rule 6(12)(a), the applicant must show that he will not otherwise be afforded the substantial redress at the hearing in due course.¹ The degree of the relaxation of the rules and of the ordinary practice of the court depends upon the degree of urgency of a case.²

[54] Having said that, it should be noted that the Uniform Rules of Court allows the respondent who is negatively affected by an order which was granted in their

¹ See *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F; *AG v DG* 2017 (2) SA 409 (GJ) at 412A.

² See *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Co Ltd* 2006 (5) SA 333 (W).

absence and in terms of rule 6(12)(a) launch a reconsideration application under rule 6(12)(c).

[55] Rule 6(12)(c) of the Uniform Rules of Court which offers a reconsideration application reads as follows:

'A person against whom an order was granted in such a person's absence in an urgent application may by notice set down the matter for reconsideration of the order'.

[56] Rule 6(12)(c) serves as a mechanism to allow the court to hear from the affected party, ensuring a fair hearing and correcting any injustices or oppression resulting from the initial ex parte order. The rule allows the court to reconsider, vary, or discharge the original order after hearing arguments from both sides, with the dominant purpose of achieving justice and full ventilation of the controversy.

Application and interpretation of Rule 6(12)(c) by the courts

[57] It is trite that the overriding purpose of rule 6(12)(c) is to afford an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from an order granted as a matter of urgency in his absence.³ In *ISDN Solutions (Pty) Ltd v CSDN Solutions CC* the High Court stated the following regarding rule 6(12)(c):

"It affords to an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from, an order granted as a matter of urgency in his absence. In circumstances of urgency where an affected party is

³ See *Lourenco v Ferela (Pty) Ltd (No 1)* 1998 (3) SA 281 (T) at 290E–H; *National Director of Public Prosecutions v Braun* 2007 (1) SA 189 (C) at 194B and 197C–D.

not present, factors which might conceivably impact on the content and form of an order may not be known to either the applicant for urgent relief or the Judge required to determine it”.⁴

[58] Its rationale is to address the actual or potential prejudice because of an absence of *audi alteram partem* when the order was made in the absence of the respondent.⁵

[59] A court that reconsiders any order in terms of rule 6(12)(c) should do so with the benefit not only of argument on behalf of the party absent during the granting of the original order but also with the benefit of the facts contained in affidavits filed by all the parties.

Urgency in reconsideration applications

[60] Rule 6(12)(c) itself contains no internal directive regarding urgency. The rule simply requires that reconsideration be set down on notice. The rule is a sub-rule to rule 6(12) which provides in 6(12)(a) for urgent applications. As a matter of construction, it seems that a party seeking a reconsideration under 6(12)(c) is required, if it wishes that the reconsideration be dealt with urgently, to provide a basis justifying an urgent hearing for the reconsideration.

[61] This is in line with the reasoning of the High Court in *Joint Venture Comprising Gorogang Plant Razz Civils v Infiniti Insurance Ltd*⁶ where it is stated that:

“An application for reconsideration is not urgent for the purposes of rule 6(12) simply because an order was granted in the urgent court. This means that, in the

⁴ 1996 (4) SA 484 (W) at 486H-I.

⁵ *Industrial Development Corporation of South Africa v Sooliman* 2013 (5) SA 603 (GSJ) at para 10; *Farmers Trust v Competition Commission* 2020 (4) SA 541 (GP) at para 23.

⁶ [2024] ZAGP JHC 1048 at para 71 (15 October 2024).

absence of demonstrable prejudice in the time between when an application may be heard before an urgent court and in the ordinary course, a party seeking a reconsideration must set out the prejudice that will ensue. The threshold is the same whether in an application for reconsideration or when approaching the court under rule 6(12)(a). In both instances, the parties seeking relief must set out in clear terms facts duly supported that will pass the threshold of ‘absence of substantive relief’ if the matter is not heard before the Urgent court.”

[62] Similarly, in *Sheriff Pretoria North East v Flink and Another*⁷ it was observed:

“Nothing in rule 6(12)(c) suggests that such a respondent would be entitled to enrol the matter for reconsideration again on an urgent basis merely because the order had been obtained on an urgent basis. A proper case will have to be made out independently for the urgency of reconsideration of the order.”

[63] The High Court in *Joint Venture Comprising Gorogang Plant Razz Civils and Others* correctly stated, after endorsing the proposition that a reconsideration application is not automatically urgent, that it was:

“...not inclined to strike this matter from the roll and [instead] preferred to address the merits of the matter as all the papers are before me, [because] I have heard full argument in relation to both the procedural aspects and the merits and *therefore there is no good reason to burden another court in the circumstances.*”⁸

[64] The facts in this matter are that the Strijdom J Order was obtained *ex parte*. It was thus granted in the absence of the second respondent. Similarly, the Mooki J Contempt Order was also granted in the absence of the second respondent.

⁷ [2005] JOL 14761 (T).

⁸ [2024] ZAGP JHC 1048 at para 6.

The reason for all these was as a result of the second respondent not being made aware of these *ex parte* applications. These meant that only the applicant's version was considered by the court in both two *ex parte* applications. In any event, the Strijdom J Order was also accompanied by the *rule nisi* which is ripe for hearing as it was meant to be made final on 25 September 2025.

[65] It is therefore, in my view, advisable to follow the same approach adopted in *Joint Venture Comprising Gorogang Plant Razz Civils and Others* because, even if the case for urgency advanced by the second respondent for reconsideration is somewhat limited, it is nonetheless a more appropriate use of judicial resources, and a more appropriate balancing of the rights of the parties to consider the application on the merits than to ascribe strictly to procedural rules relating to urgency.

[66] Accordingly, considering the context and history of this matter, I am of the view that the merits regarding the validity of the sale of the Property to the second respondent requires to reach finality, especially because the contestation between the second respondent and applicant affect minor children of both parties. It is therefore in the interest of justice that this court should adjudicate on the merits in this matter as a matter of urgency.

Whether the Strijdom J Order, and by extension, the Mooki J Contempt Order, should be reconsidered and set aside

[67] On the merits, the second respondent submits that both Court Orders were granted erroneously for various procedural and substantive reasons. Accordingly, this court ought to exercise the wide discretion that it has in such

matters to set aside both Court Orders. Lastly, the rule nisi ought not to be made final.

[68] I agree with the second respondent that the Strijdom J Order must be set aside.

It is not disputed that the second respondent is the registered owner of the Property through Industrial Butcher (Pty) Ltd, a company of which he is the sole director. It follows therefore that the second respondent and his family have a right to occupy the Property because he owns it.

[69] To this end, it is worth stressing the best evidence for proof of ownership of immovable property is the Title Deed.⁹ The Deed of Transfer is before this court. In terms of the Deed of Transfer, Industrial Butcher (Pty) Ltd is the registered owner of the Property. In terms of section 6 of the Deeds Registries Act 47 of 1937, no Deed of Transfer may be cancelled by the Registrar of Deeds except upon an order of court.

[70] On the other hand, the applicant has not pleaded or proven ownership of the Property. She has also not claimed any limited real rights over the Property (such as a right to habitation). The applicant has also failed to prove that she has a personal right to occupy the Property (such as through a contract) or any statutory right of residence or occupation of the Property. What the applicant alleged in contesting the second respondent's ownership of the Property is that the first respondent fraudulently or illegally sold the Property to the second respondent.

⁹ *Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd* 1993 (1) SA 77 (A) at 82B.

[71] Even if it were appropriate in these proceedings to consider the lawfulness of the sale of the Property to the second respondent (which it is not because that is not the cause of action before this Court), there is no basis in the papers for any finding of fraud because it has not been pleaded. It would therefore be inappropriate for this court to infer fraud on the part of the second respondent in circumstances where no fraud is pleaded against him in any of the papers, or to imply that such fraud (if it had been pleaded and proven) could have any relevance to these proceedings.

[72] For these reasons, I am of the considered view that the second respondent's ownership of the Property is undisputable. Further, the applicant has no right in law to demand that the second respondent be evicted from the Property or to demand occupation of the Property.

[73] It follows therefore that the Mooki J Contempt Order cannot remain since this court has now concluded that the Strijdom J Order must be set aside. In other words, since the Strijdom J Order is set aside it follows therefore that the Mooki J Contempt Order must also be set aside.

[74] Lastly, the conclusion reached in this judgment means that there is therefore no basis for this court to decide on whether the *rule nisi* should be made final. In other words, the setting aside of the Strijdom J Order means that whether the *rule nisi* should be made final becomes a none issue.

Costs

[75] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there be good grounds for doing so, such as misconduct on the part of the successful

party or other exceptional circumstances. The second respondent has been successful in this matter. As a successful party, I am of the view that the costs should follow the results.

[76] Having said that, the only issue that this court needs to decide is to what extent is the applicant liable for the second respondent's costs. In this regard, the second respondent submits that this court should grant him the costs of both the Strijdom J Order and Mooki J Contempt Order including the costs of counsel because both orders were sought on an *ex parte* basis where there was no justification for an *ex parte* hearing, nor was any case made for an *ex parte* hearing or a hearing in the absence of the cited respondents. He argues that the applications were an abuse of process. I disagree with the second respondent on this point. The second respondent cannot be entitled to costs for the Strijdom J Order and Mooki J Contempt Order when he did not participate in those proceedings.

[77] Secondly, the second respondent submits that he instituted the Suspension Application which was heard Swanepoel J to suspend the implementation of the Mooki J Contempt Order. The application was successful. To this end, the Swanepoel J provided that costs of the Suspension Application are costs in the cause, so if this reconsideration application is successful, it is appropriate that costs follow the result. I agree with the second respondent on this point.

[78] Against this background, the applicant should therefore pay the second respondent's costs in this reconsideration application and the Suspension Application on the attorney and own client scale, including the costs of counsel.

Order

[79] In the result, I make the following order:

1. The order granted by Strijdom J on 24 May 2025 under the above case number is substituted with the following order:

“The application is dismissed with no order as to costs”

2. The order granted by Mooki J on 29 May 2025 under the above case number is substituted with the following order:

“The application is dismissed with no order as to costs”

3. The Applicant is ordered to pay the second respondent’s costs in this reconsideration application and the Suspension Application on the attorney and own client scale, including the costs of two counsel.

MD BOTSI-THULARE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of Hearing: 25 September 2025

Date of Judgment: 17 October 2025

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