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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE No: 12193/2022

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

SIGNATURE: DIAMOND AJ

DATE: 03 NOVEMBER 2025

In the matter between:

BA-PALABORWA LOCAL MUNICIPALITY

APPLICANT

and

**MINISTER OF AGRICULTURE,
LAND REFORM & RURAL DEVELOPMENT.**

FIRST RESPONDENT

**MEMBER OF THE EXECUTIVE COUNCIL,
DEPARTMENT OF COOPERATIVE
GOVERNANCE, HUMAN SETTLEMENTS
AND TRADITIONAL AFFAIRS,
LIMPOPO PROVINCE.**

SECOND RESPONDENT

**THE MASTER OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE.**

THIRD RESPONDENT

THE REGISTRAR OF DEEDS, POLOKWANE

FOURTH RESPONDENT

MOGUDI JOYCE MOKHESE

FIFTH RESPONDENT

NEIL CHRISTIAAN JACOBS N.O.

SIXTH RESPONDENT

THOMAS LUKOSE

SEVENTH RESPONDENT

CHAMAKALAKIZHAKETHIL N.O.

JOY PREEMA N.O.

EIGHTH RESPONDENT

DEVENDRA BABOOBHAI N.O.

NINTH RESPONDENT

THAKI WILLIAM MOJAPELO

TENTH RESPONDENT

MASAKOMARY MOJAPELO

ELEVENTH RESPONDENT

JUDGMENT

DIAMOND A J:

[1] The ultimate question in this application is simple. However, to arrive at the ultimate question, an epic journey through the procedures for registering properties that were previously registered under the Black Administration Act, 1927, was necessary.

[2] One Jackson John Mogudi (“the Deceased”) held a Title Deed, TG 138/1974 LB in respect of a property known as Erf 3[...], Namakgale-B Township, Registration Division LU, Limpopo Province measuring 1837 sq. meters (the “Property”)

[3] As is clear from the number of the Title Deed, the Property was created in 1974. It is not clear exactly when the Deceased became the registered title holder of the Property, but all parties to this application appear to accept that the Deceased

did in fact become the registered title holder of the Property, and I will approach the judgment on this basis.

[4] The Applicant alleges that around the 25th of May 2004, the Deceased made application for the transfer of the property to the 10th and 11th Respondents. I will refer to this transaction as the Mojapelo transaction.

[5] The Deceased passed away on 21 October 2012.

[6] The 6th Respondent (by virtue of the fact that it is the appointed executor of the estate of the deceased) as well as the 5th Respondent (by virtue of the fact that she was the surviving spouse of her marriage with the deceased which was in community of property) both applied for the transfer of the Property to the 7th, 8th and 9th Respondents, being the trustees of the Chamakala Trust. I will refer to the three respondents as “the Trust”. I will refer to this transaction as the Trust transaction. The two Respondents signed this application on 31 July 2015, and the application was done on the officially prescribed form (PLD 007) and eventually registered in the Deeds Office in Pretoria, and a Deed Number was endorsed on the application, viz TG 114181/20015¹

[7] The reason for the transfer is given on the document as “SALE”.

[8] It seems that shortly after having become the owners, by virtue of the registration of the request for the transfer of ownership in the Deeds Office in Pretoria, the Trustees started to exercise ownership rights on the subject property.

[9] It seems furthermore that the Mojapelos, seemingly under the impression that they were the owners of the subject property by virtue of the Mojapelo transaction, started to interfere with the Trustees' exercise of ownership on the subject property.

¹ It needs to be stated at this juncture that the copies of documents attached to the documents on the court file are illegible and poor copies. This made the writing of this judgment tedious and time-consuming. It is not clear precisely what the number of the Title Deed endorsement was, several other documents are also barely readable.

[10] The trust applied for an interdict in the Magistrates' Court for the district of Namakgale interdicting the Mojapelo from interfering with the Trustees' exercise of their ownership rights with regard to the Property. The order was given on 10 June 2016.

[11] The Mojapelo's thereafter continued to seek assistance from officials of the Applicant, and they were always assured that they had concluded a "valued sale agreement" for the acquisition of the property. The explanation given by the officials was, however, that the officials of the Second Respondent did not process the transfer due to an administrative error.²

[12] The Mojapelos instituted action against the 3rd, 4th, 5th, 6th, 7th and 8th Respondents in which they sought a declaration that the Trust transaction was null and void and a further order setting aside the transfer of the property to the Trust and further relief pertaining to the estate account of the deceased. This action was instituted on the 11th of April 2017.

[13] This action was never brought to finality, and it seems it was eventually withdrawn.

[14] The Mojapelos thereafter laid a complaint, on 22 January 2022 with the Public Protector, stating in their complaint that they did everything required of them to effect transfer of the Property into their name following the Mojapelo transaction. The Public Protector gave the Applicant the opportunity to respond to the complaint.

[15] On the 21st of July 2020, the Applicant and the Mojapelos entered into a settlement agreement in terms of which:

- The Applicant admitted and conceded that Mr. Mojapelo bought the property from the Deceased.

² Par 57.1 of the Founding affidavit

- That Mr. Mojapelo initiated the process of transferring the property from the Deceased into its name.
- That the Applicant admits that due to administrative problems the Property was not transferred.
- That the Municipality has appointed a conveyancer who shall commence with the process of nullifying the Trust transaction and furthermore to register the property in the name of the Mojapelos.

[16] This application is then the application which the Applicant brings to discharge their obligation towards the Mojapelo's, that is to commence with a process of nullifying the Trust transaction and to register the subject property in the name of the Mojapelo's.

[17] In this application, the applicant applies for:

- An order condoning for the bringing of a review application outside the 180-day time period in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) ("PAJA"):
- An order setting aside the decision of the applicant to approve the trust transaction.
- An order setting aside the approval of the second respondent approving the transfer of the trust transaction.
- An order ordering the second respondent to give effect to the Mojapelo transaction.
- An order ordering the Fourth Respondent to effect registration of the transfer to Mojapelo's.

[18] Section 9 of PAJA stipulates that a court or tribunal may grant an extension of the 180-day period where the interests of justice so require.

[19] Regarding the application for the extension of time in terms of section 9 of PAJA: I deem it in the interest of justice to grant condonation to the Applicants. It has to be said simultaneously, though, that the Applicant does an exceptionally poor job of explaining the lapse of almost 20 year time period before this review application was brought.

[20] Apart from that, although the applicant explains certain actions which the Mojapelos took in the meantime, long periods of time are still unaccounted for. What is also clear though is that the Mojapelos undertook several actions and that there were previously two court cases instituted, and a complaint laid with a Public Protector in order to resolve this issue.

[21] It is time to bring this dispute to rest, and it is therefore in the interest of justice to extend the period within which the Applicant shall be entitled to bring this application, and the period is extended up until the date of the issue of this Notice of Motion.

[22] I will turn at this juncture to the merits of the application.

[23] What was set out in paragraphs 1 to 17 above was the timeline of events that unfolded, and which led to the bringing of this application.

[24] There is a second timeline which is pivotal to adjudicate this application, and that is the timeline of the unfolding of the legal context within which transfers of properties of the nature of the subject property had been done in the past and are currently being done.

[25] Between 1927 and 1991, properties that were created as registrable entities either in townships or outside formalized townships were registered and transferred in terms of the stipulations of the Black Administration Act, 1927, and the regulations

promulgated in terms thereof. It is common cause between the parties that the subject property is such a property.

[26] The specific nature of the procedures in terms of which properties were created as registrable entities and the granting of rights with regard to those properties, as well as the transfer of those rights, took place over an extended period of time and is complicated. I do not deem it necessary to delve into this aspect for purposes of this judgment.

[27] What is important for purposes of this judgment is that there were several governmental institutions involved in the granting and transfer of land pertaining to such properties, depending on the relevant legislation that applied at that stage to the persons (black persons) and where such properties were situated. Of pivotal importance for this judgment, however, is that none of those transactions were registrable in terms of the Deeds Registries Act, 1937 (Act 47 of 1937). That is the Act dealing with property registrations for white people in South Africa. I will henceforth refer to this act as the Deeds Registries Act.

[28] Things changed in 1991. On the 1st of September 1991, the Upgrading of Land Tenure Rights Act 1991 (Act no 112 of 1991) ("the Act") commenced.

[29] Also, in 1991, the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991) repealed segregated land legislation laws in South Africa and scrapped all laws enforcing racial segregation and land segregation and abolished racially based institutions.

[30] It is important to note, however, that in terms of certain transitional arrangements, the institutions, deeds registries, and administrative systems were kept in place until such time that final rationalisation could take place.

[31] The rationalisation of administrative procedures, Deeds Registries, and procedures were finalised in 1997 with the so- called Presidential Proclamation R9 of 1997 that dealt specifically with the rationalization of the Deeds offices in South Africa. In terms of this proclamation all historically separate Deeds Registries

integrated the registries into the Deeds Registries existing in terms of the Deeds Registries Act, 1937 and clarified the transfer, consolidation, and discontinuation of the so-called rationalized registries.

[32] Since both the Mojapelo and Trust transactions occurred post 1997, in other words, at a stage that the separate Deeds, Registries, in terms of the Black Administration Act were done away with, I will not deal at all with the registration of property transactions between 1991 and 1997.

[33] Section 6 of the Act stipulates as follows³:

“6. Effect of Act. — (1) The provisions of any law governing the registration and transfer of any land tenure mentioned in Schedule 1 shall—

(a) as from the commencement of this Act, no longer apply in respect of any township referred to in section 2 (1) (a) or in respect of any erf or any other piece of land in such township;

(b) as from the opening of a township register for a township referred to in section 2 (1) (b), no longer apply in respect of the township for which the township register is opened or in respect of any erf or any other piece of land in such township; or

(c) as from the commencement of this Act, no longer apply in respect of any land which does not form part of a township.

(2) As from the discontinuation of the provisions of any law in terms of subsection (1) relating to any township or piece of land referred to in that subsection, any authorization in any such law for the granting of any land tenure right mentioned in Schedule 1 in respect of any erf or other piece of land in such township or in respect of such piece of land, shall be construed as authorization for the granting of ownership in respect of any such erf or piece of land.

(3) Property transactions in any township referred to in section 2 (1) (a) or (b) shall—

³ I added the emphasis.

(a) in the case of the transfer of any erf or any other piece of land of which the township owner is immediately after the commencement of this Act or the opening of the township register, as the case may be, still the owner, be disposed of in accordance with section 3 (1) (a), if any land tenure right mentioned in Schedule 2 has been granted in respect thereof, or in accordance with section 13, if any such land tenure right has not been granted in respect thereof; and

(b) in the case of any other transfer of erven and other pieces of land in any such township, be disposed of in accordance with the Deeds Act.

(4) Property transactions with reference to any land which does not form part of a township shall—

(a) in the case of the transfer of such piece of land in respect of which any land tenure right referred to in Schedule 2 has been granted, be disposed of in accordance with section 3 (1) (b); or

(b) in the case of any other transfer, be disposed of in accordance with the Deeds Act.”⁴

[34] In my view, a further section of the Act is of pivotal importance in adjudicating this application. This section is Section 2 of the Act, which reads as follows:

“2. Conversion of land tenure rights mentioned in Schedule 1. –

(1) Any land tenure right mentioned in Schedule 1 and which was granted in respect of –

(a) any erf or any other piece of land in a formalised township for which a township register was already opened at the commencement of this Act, shall at such commencement be converted into ownership;

(b) any erf or any other piece of land in a formalised township for which a township register is opened after the commencement of this Act, shall at the opening of the township register be converted into ownership;

⁴ This was the text of this section in 1991, the date of the commencement of the Act. There was also a subsection 5 which was subsequently deleted in 1998, by way of an Amendment Act. Emphasis was added.

(c) any piece of land which is surveyed under a provision of any law and does not form part of a township, shall at the commencement of this Act be converted into ownership, and as from such conversion the ownership of such erf or piece of land shall vest exclusively in the person who, according to the register of land rights in which that land tenure right was registered in terms of a provision of any law, was the holder of that land tenure right immediately before the conversion.”⁵

[35] Section 2 of the Act, therefore, has the effect of converting title holdership of any type of title mentioned in Schedule 1 of the Act into full ownership by operation of law at the various dates mentioned in Section 2.

[36] Schedule 1 to the Act stipulates as follows:

“Any deed of grant or any right of leasehold as defined in regulation 1 of Chapter 1 of the Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation No. R.293 of 1962).”

[37] Regulation 1 of Chapter 1 of Proclamation R.293 of 1962 reads as follows:

“ “deed of grant” means a deed of grant issued under these regulations or deemed to have been issued thereunder in respect of an ownership unit in the township.”

[38] Section 3(1) stipulates the duties of the Registrar of Deeds and amongst other stipulates in subsection (p)(bis)

“(p)bis despite the repeal of the regulations, proclamations and by-laws made under sections 25 (1), 30 (2) and 30A (1) of the Black Administration Act, 1927 (Act No. 38 of 1927), by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act No. 28 of 2005)—

⁵ Emphasis added.

- (i) *continue to register any registrable transaction concerning a right originally acquired in terms of or under the Black Administration Act, 1927, in accordance with the legislation which created that right; and*
- (ii) *exercise all the other powers and perform all the other duties vested in or imposed upon a Chief Commissioner or registration officer by or under the Black Administration Act, 1927;”*

[39] Section 16 (D) of the Deeds Registries Act stipulates as follows:

[40] “16D. Registration of transfer of rights acquired in terms of or under Black Administration Act, 1927. —

Despite the repeal of the Black Administration Act, 1927 (Act No. 38 of 1927), by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act No. 28 of 2005), and despite the other provisions of this Act and any other law, a right originally acquired in terms of or under the Black Administration Act, 1927, shall be transferred in accordance with the legislation which created that right”.

[41] The following seems to me to be clear against the backdrop of all the above:

- It is common cause between the parties that the Deceased became the owner of the property by virtue of Deed of Grant number TG138/1974 LB.
- That Deed of Grant was a Deed of Grant issued in terms of Proclamation Number R293 of 1962, as is stipulated in Schedule 1 to the Act.
- The Deed of Grant also pertained to a property which was at the very least a property falling within the definition of Section 2 (1)(c) and that is, if that property is or was never situated in a township within a township registered as defined in Section 46 (1) of the Deeds Act.⁶

⁶ There are very strong indications from the papers that the property relates to a property which is situated in a formalised township as indicated in a township register that was already open at the

- This fact brings the property and the title of the Deceased within the ambit of Section 2(1) of the Act, and that means that, as from the date of the commencement of the Act, the title of the Deceased's title was converted into full ownership. As from the date such conversion, the ownership of the erf or the piece of land shall rest exclusively in the person who, according to the register of land rights in which that land tenure right was registered, shall forthwith be the owner of the land. According to the wording of this section, this conversion took place by operation of law and required no formal act of registration by the Registrar of Deeds.⁷
- After the commencement of the Act and specifically against the backdrop of Section 16D and Section 3(1) of the Registries Act, the Registrar of Deeds became obliged to register transactions of terms of properties that were initially created by virtue of proclamation R293 in accordance with such procedures.
- Annexure "FA006" which is attached to the founding affidavit is a document which carries an official document number called "BLD007", and it is entitled "*Application for Transfer of Ownership*/Letting Unit* for Residential Purposes.*"
- In terms of Section 6 of the Deeds Registries Act: As from the date of the commencement of the Act, the transfer of any, right mentioned in Schedule 1, shall take place in accordance with the Deeds Registries Act.

[42] In my view, the implications of the above explanations are clear for the set of facts before me: Despite the labyrinth of statutory stipulations that were created to transition formerly Proclamation R293 properties and rights to full ownership, the holders of such holders of rights enjoyed full and unrestricted ownership to such properties, equal to full ownership rights applicable to all owners in terms of the law of the land.

commencement of this Act; A township register is defined in the Act in section 1 as a township register, as referred to in section 46(1) of the Deeds Registries Act.

⁷ Although the registrar was obliged to amend its records in terms of Section 2 of the Act.

[43] In my view, one should specifically not be blinded by the fact that the Deeds Registries Act continued to use the prescribed forms in terms of Proclamation R 293 to mean that the substantive legal position prior to the commencement of the Act still applied. The continued use of these forms simply means that the forms and procedure may be accepted by the Registrar of Deeds to register transactions, but the substantive law applicable to such transactions and properties shall be equal to all other rights holder in the country when it comes to property, and in particular, immovable property.

[44] The above observation, when it comes to the set of facts before me, is important, when one considers the relief sought by the applicant in its Notice of Motion.

[45] In prayers numbers 2 - 6 of the Notice of Motion, the Applicant claims the following:

“2. That the decision by the Applicant dated 9 September 2015, to process, finalise and recommend the transfer of the property known as Erf 3[...], Namakgale-B Township, Registration Division, LU, Limpopo Province, measuring 1837 (ONE THOUSAND AND EIGHT HUNDRED AND THIRTY SEVEN) square meters, held by Title Deed No TG 138/1974 LB (“the Property”), is declared void ab initio.

3. That the decision by the second respondent dated 21st of September 2015, approving the Deed of Grant transfer to the property to the ninth respondent is unlawful, unconstitutional and is reviewed and set aside.

4. That the second respondent is ordered to, within thirty (30) days of this order, finalise the application for the transfer of the Deed of Grant between the Late Jackson John Mogudi and the tenth and eleventh respondents.

5. Alternatively, to prayer 4 above, that the Second Respondent is ordered to take a decision within thirty (30) days of the date of this order.

6. That the fourth respondent, and only if it is necessary, is ordered to effect registration of the deed of grant to the tenth and eleventh respondents within thirty days after the decision by the second respondent in terms of prayer 4 above, or, alternatively, prayer five (5).”

[46] It is clear, in my view, from the reading of the above prayers that the Applicant approached this court on the basis, and labours under the impression that the resolutions of the Applicant, dated 9th and 21st September 2015, constitute the *causa* for the transfer of ownership from the Deceased and his surviving spouse to the Trust.

[47] If this line of argument is adopted, that would, of course, automatically mean that should the resolutions taken be void ab initio, then no transfer could have taken place.

[48] In my view, however, this approach is fundamentally flawed. After the commencement of the Act, and within the context of Section 2(1) there has been no fundamental difference in the way that owners of properties that were formerly categorised as Proclamation R293 properties, would dispose of and transfer properties to purchasers.

[49] Resolutions taken by the officials of the applicant and of the first Second Respondent could play no role as a cause for the transfer of the Property from the owners to the Trust.

[50] As was observed earlier, the cause of the transfer between the owners of the trust is recorded in Annexure "**FA006**", as SALE, meaning that all the fundamental legal requirements for a simple private law sale between the executor of the estate of the deceased and the surviving spouse of the deceased.

[51] In terms of the facts before this court, the Executor of the Estate and the surviving spouse of the Deceased gave transfer to the Chamakala Property Trust by way of a normal transaction of sale, which then led to the transfer of the Property to the Trust. In such a normal transaction of sale, the only fraud that could unravel the transaction between transferor and transferee, within the facts, which are before the court, is fraud perpetrated by one of the parties on the other.

[52] Such fraud is not described in the papers, nor is it relied upon.

[53] The form BLD007 was properly registered by the Registrar of Deeds, and a number, TG 114181/2015, was given to this transaction.

[54] In my view, this Title Deed is valid, and the title deed can only be cancelled within the context of Section 6 of the Deeds Registries Act.

[55] No relief is sought in the notice of motion to cancel TG 114181/2015, nor are there any facts before this court that would justify the granting of such an order.

[56] In my view, the only way to escape my conclusion set out above would be to conclude somehow or another that the Property and the title of the Deceased to the Property fell outside the ambit of Section 2 of the Act.

[57] Now, to be thorough, one has to take cognizance of the judgment of *Rahube v Rahube and Others*⁸ (“*Rahube*”) in which it was ordered:

“1. The order of constitutional invalidity made by the High Court of South Africa, Gauteng Division, Pretoria (High Court) on 26 September 2017 in respect of section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991 is confirmed subject to the variations set out in paragraph 2.

2. The order of the High Court is varied to read:

“(a) Section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991 is declared constitutionally invalid insofar as it automatically converted holders of any deed of grant or any right of leasehold as defined in regulation 1 of Chapter 1 of the Regulations for the Administration and Control of Townships in Black Areas, 1962 Proc R293 GG 373 of 16 November 1962 (Proclamation R293) into holders of rights of ownership in violation of women’s rights in terms of section 9(1) of the Constitution.

(b) The order in (a) above is made retrospective to 27 April 1994.

⁸ (CCT319/17) [2018] ZACC 42; 2019 (1) BCLR 125 (CC); 2019 (2) SA 54 (CC) (30 October 2018).

(c) In terms of section 172(1)(b) of the Constitution, the order in paragraph 2(a) and (b) shall not invalidate the transfer of ownership of any property which title was upgraded in terms of section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991 through finalised sales to third parties acting in good faith; inheritance by third parties in terms of finalised estates; and the upgrade to ownership of a land tenure right prior to the date of this order by a woman acting in good faith.

[58] The question is whether this transaction before the court is affected by the order in *Rahube*.

[59] I do not think so.

[60] The declaration of invalidity of Section 2 of the Act shall only operate insofar as it automatically converts rights to property into holders of rights of ownership in violation of women's rights in terms of section 9(1) of the Constitution.

[61] Since this aspect was never canvassed in argument initially before court, nor on the papers before the court, I wrote a practice directive to the respective parties to request supplementary arguments from them regarding the applicability of the *Rahube* judgment. Both parties indicated in their supplementary Heads of Argument that the *Rahube* judgment does not apply in any way to this case.

[62] I understand their viewpoint in this regard to mean that there is no evidence of any rights which a woman may have, which would have been infringed by the automatic conversion of the rights held in terms of the Deed of Grant by the Deceased. I agree with their submissions in this regard.

[63] This means that Section 2 of the Act applies to the Property and the title that the Deceased held to the Property. At the commencement of the Act, his title was automatically and by operation of law immediately converted into full ownership. This means that the Deceased and only the Deceased was entitled to alienate the property. Whatever role officials of the Applicant and the Second Respondent had

under the previous dispensation did not apply anymore, as far as the substantive requirements for the transfer of the Property was concerned.

[64] In any event, if this approach is wrong, then the Trust transaction is safeguarded in my view, by the amended order of the High Court, and more particularly paragraph 2(c), referred to above, in that the transaction was a transaction in good faith and for value, as is referred to in the court order.

[65] The question that should further be considered is this: It is clear that by the date of the passing of the deceased, he was married in community of property and he left a surviving spouse. The question is, did this conversion not violate any of the rights of the surviving spouse?

[66] I do not think so: Annexure “**FA006**” is, that is TG 114181/2015, makes it clear that the transfer was given by both the Executor in the Estate of the Deceased and the surviving spouse of the Deceased, with whom she was married in community of property.

[67] This means that the surviving spouse became a joint owner of the property by operation of law and would have been entitled to an endorsement in terms of section 17(4) of the Deeds Registries Act, reflecting such a fact in the records of the Deeds Registries.

[68] As such, the surviving spouse would have enjoyed full protection of Section 15 (2)(a) of the Matrimonial Property Act, 1984 (Act 88 of 1984) stating that any immovable property of the joint estate can only be alienated with the consent of the spouse with whom a seller is married in community of property.

[69] The surviving spouse did give the necessary consent for the Trust transaction: She is a joint transferee of the property, as is evidenced by Annexure “**FA006**.”

[70] In my view, the remedies for Mojapelo’s could be the application of the doctrine of notice and the principles applicable to double sales. There is, however, no facts before this court to make an order on this basis.

[71] To begin with, there is no indication that Mojapelo's bought the property with knowledge of the previous transaction, which the Applicant allege existed.

[72] Furthermore, in my view, there is not even evidence before the court that the Deceased did in fact enter into a transaction of sale with the Mojapelos, with the consent of his wife⁹, with whom he was married in community of property, as is required by Section 15(2) of the Matrimonial Property Act. The entire focus of the application of this application is the alleged fraudulent conduct of officials of the Applicant and the Second when it came to the Trust transaction.

[73] The Mojapelo's could furthermore consider claiming restitution, had they paid any consideration for the Property, or perhaps a claim for damages, against those that misled them into believing that they took care of the transfer of the Property from the Deceased to themselves. There are no facts before the court to draw any conclusion as to what the appropriate remedy for the Mojapelo's could be.

[74] I also wish to make a remark regarding the alleged fraudulent conduct of the officials of the Applicant.

[75] As is stated in *Nedperm Bank Ltd v Verbri Projects CC*¹⁰ (Nedperm)

*"At the outset one has to observe that it is trite that fraud is a most serious matter and the type of allegation which is not lightly made and which is not easily established. What is important is that a factual basis must be laid for an allegation of fraud, and it is not sufficient, particularly in an affidavit resisting summary judgment, merely to put up speculative propositions or to raise submissions or to advance arguments on probabilities which might indicate a fraud."*¹¹

⁹ It is, of course, possible that at that stage, the deceased was not married to the person who is eventually indicated as his surviving spouse in his estate. Even if that is so, one would have expected the papers to deal explicitly with this issue.

¹⁰ 1993 (3) SA 214 (W) at 220B..

¹¹ Emphasis added.

[76] In my view, the allegations of fraud and the basis on which the Applicant requests this court to find that there was fraud on the part of the officials of the Applicant, do not meet the evidential standard as articulated in *Nedperm*. In my view, the Applicant did no more than raise speculative propositions and raised submissions to advance arguments on probabilities which might indicate fraud. I do not elaborate on these aspects any further, in view of the conclusions that I reached, and which are set out above.

[77] In my view, therefore, this application must fail.

[78] Considering the scale of fees to counsel as contemplated in Uniform Rule 67A(3)(a), this Court is satisfied that, having regard to the complexity of the matter, the extent of the record, the importance that the matter has to the Applicant and Respondents, that costs to counsel on Scale C is warranted

The court orders as follows:

- (a) The application is dismissed.
- (b) The Applicant is ordered to pay the costs of the Respondents, and the costs of counsel shall be taxed on scale C, as is contemplated in Rule 67A(3)(a).

G J DIAMOND
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

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DATE OF HEARING : 27 MARCH 2025.

DATE OF JUDGMENT : 3 NOVEMBER 2025.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 3 NOVEMBER 2025.