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REPUBLIC OF SOUTH AFRICA



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

Case Number: 25620/2024

(1) REPORTABLE: YES / NO

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

(3) REVISED: YES/NO

DATE: 20/11/2025

SIGNATURE

In the matter between: -

YUHUI WANG

Applicant

and

**CHINA AFRICA INDUSTRIAL HOLDINGS (PTY) LTD
THE REGISTRAR OF DEEDS**

First Respondent
Second Respondent

JUDGMENT

INTRODUCTION:

- [1] This interlocutory application was initiated by the First Respondent on *7 June 2024*, seeking to have the Applicant's main application referred to trial in accordance with rule 6(5)(g) of the Uniform Rules of Court. It further requests consolidation of this matter with the action initiated by the First Respondent under case number *2024-04643*, as well as leave to submit a supplementary affidavit.
- [2] In this judgment for ease of reference I shall refer to the parties as they are cited in the main application.

CHRONOLOGY:

- [3] On *7 March 2024*, the Applicant initiated motion proceedings against *inter alia*, the First Respondent, seeking an order declaring the deed of sale between the parties void *ab initio*, or *alternatively*, cancelled or terminated. The Applicant further requested that the section 20(1) endorsement of the Alienation of Land Act, Act 68 of 1981 registered in favour of the First Respondent against the title deed of the property be cancelled (main application).
- [4] Subsequently on *26 April 2024*, the First Respondent initiated action proceedings against the Applicant, seeking an order compelling the transfer of the property in question to the first respondent. *Alternatively*, the First Respondent requests that the Applicant reimburse the amounts paid by the First Respondent towards facilitating the transfer of the property.
- [5] The relief requested by the Applicant in her main application and that sought by the First Respondent in its action (excluding the alternative relief) are mutually destructive of one another.

COMMON CAUSE FACTS:

[6] The parties are in agreement with the following:

[6.1] This matter concerns the immovable property located at 2[...] C[...] Road, Bryanston, Johannesburg ("the property"), which is registered in the Applicant's name.

[6.2] On 27 May 2011, the Applicant and the First Respondent entered into a deed of sale ("the deed of sale"), under which the Applicant agreed to sell, and the First Respondent agreed to purchase, the property for a total price of R4 900 000.00. Payment was structured as a deposit of R490 000.00, with the remaining balance to be paid in instalments.

[6.3] The Title Deed of the property has an endorsement as per section 20(1) of the Alienation of Land Act, 68 of 1981 in favour of the First Respondent pursuant to the Deed of Sale.

[6.4] The Deed of Sale qualifies as a "*contract*" within the meaning of the Alienation of Land Act, 68 of 1981, as the purchase price was to be paid by the First Respondent in more than two instalments over a period exceeding one year.

[7] In the principal application, the Applicant requests a declaration that the deed of sale is void *ab initio* and unenforceable, or *alternatively*, that the deed of sale has been cancelled by her. Furthermore, she seeks an order for the cancellation of the endorsement on the title deed.

[8] To support her claim, the Applicant advances four alternative contentions or arguments concerning the validity and termination of the Deed of Sale. These are detailed as follows:

[8.1] The Deed of Sale is considered void from the outset because it does not meet the requirements specified in section 6 of the Alienation of Land Act, Act 68 of 1981;¹

¹ Case Lines Main App para 5.1.2 at 02-16

- [8.2] The Deed of Sale is void *ab initio*, as it was executed by the Applicant during her marriage *in community of property*, without having secured her husband's consent for its conclusion.²
- [8.3] The Deed of Sale was terminated by the lapse of time, as it stipulated a 36-month period for payment of the purchase price by the first respondent, which the first respondent failed to fulfil;³ and
- [8.4] The Applicant cancelled the Deed of Sale on 19 December 2023.⁴
- [9] The First Respondent denies each of these assertions; nevertheless, it acknowledges that the first three do not present factual disputes and can be suitably adjudicated through motion court proceedings. The First Respondent maintains, nonetheless, that the final contention presents factual issues which should be referred to trial in terms of rule 6(5)(g) to ensure a “*just and expeditious decision*” and that justice be done with the least possible delay.

REFERRAL TO TRIAL - RULE 6(5)(g)

- [10] The First Respondent seeks to refer the main application in terms of Rule 6(5)(g) of the Uniform Rules of Court which stipulates the following:

“Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the afore-going, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

[Substituted by GG 39715 of 19 February 2016 – *Regulation Gazette* 10566, Vol 608.]” (my underlining)

² Case Lines Main Appl para 5.1.1 at 02-16

³ Case Lines Main Appl para 6 at 02-20

⁴ Case Lines Main Appl para 7.15 at 02-25

- [11] If there are factual disputes which need to be resolved but which cannot or should not in the absence of oral evidence a court can refer the matter to trial or certain issues for oral evidence. The court should adopt the procedure that is best calculated to ensure that justice is done with the least delay.⁵ In this regard the court exercises a discretion.⁶
- [12] Motion proceedings focus on resolving legal questions using agreed-upon facts, except when seeking interim relief. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule⁷ that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the Applicant's affidavits, which have been admitted by the Respondent, together with the facts alleged by the latter, justify such order. It may be different if the Respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.⁸
- [12.1] In the case of *NDPP v Zuma*⁹, the SCA described the rationale behind motion proceedings as follows:

"Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities."

⁵*Johannesburg City Council v The Administrator Transvaal* (1) 1970 (2) SA 89 (T)

⁶*Cresto Machines (Edms) Bpk v Die Afdeling Speuroffisier SA Polisie Noord-Transvaal* 1970 (4) SA 350 (T) 365; *Pautz v Horn* 1976 (4) SA 572 (O).

⁷*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] 2 All SA 366 (A), 1984 (3) SA 623 (A) at 634;

⁸*National Director of Public Prosecutions v Zuma (Mbeki and Another intervening)* [2009] 2 All SA 243, 2009 (2) SA 279 (SCA) at [26];

⁹ *National Director of Public Prosecutions v Zuma (Mbeki and another intervening)* 2009 (2) SA 277 (SCA) at para [26].

[13] A real dispute of fact can arise in one or other of the following ways:¹⁰

[13.1] Where the court is satisfied that the party who purports to raise the dispute has in his affidavit, seriously and unambiguously, addressed the fact said to be disputed.¹¹

[13.2] The Respondent may deny one or more of the material allegations made on the Applicant's behalf and produce evidence to the contrary, or apply for the leading of oral evidence of witnesses who are not presently available or who, though averse to making an affidavit, would give evidence if subpoenaed.

[13.3] The Respondent may admit the Applicant's affidavit evidence but allege other facts, which the Applicant disputes.

[13.4] The Respondent, while conceding that he has no knowledge of one or more material facts stated by the Applicant, may deny them and put the Applicant to the proof, and himself giving or proposing to give evidence to show that the Applicant and his deponents are biased and untruthful or otherwise unreliable, or that certain facts upon which the Applicant relies to prove the main facts are untrue.

[14] On the other hand, a real dispute of fact does not arise where a Respondent:

[14.1] states that he can lead no evidence himself or by others to dispute the truth of the Applicant's statements, but puts the Applicant to the proof;¹² or

[14.2] relies on a bare denial of allegations contained in the Applicant's affidavits.¹³

[15] A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed.

¹⁰ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T);

¹¹ *PMG Motors Kyalami (Pty) Ltd (in liquidation) and Another v Firststrand Bank Ltd, Wesbank Division* [2015] 1 All SA 437 (SCA)

¹² *Klep Valves (Pty) Ltd v Saunders Valve Co Ltd* 1987 (2) SA 1 (A) 23–25;

¹³ *Soffiantini v Mould* 1956 (4) SA 150 (E)

- [16] Bearing the aforementioned in mind, I will consider the four contentions raised by the First Respondent and whether they amount to real and genuine factual disputes:

CONSIDERATION OF FOUR CONTENTIONS

A. DEED OF SALE VOID AB INITIO - NON COMPLIANCE WITH ALIENATION OF LAND ACT 68 of 1981

- [17] Regarding the Applicant's first argument—that the deed of sale is void *ab initio* because the written agreement did not meet the requirements of the Alienation of Land Act 68 of 1981—the First Respondent merely states that it disagrees and that "*legal argument will be made on this at the hearing.*"¹⁴ This statement is simply a bare denial by the First Respondent, without any explanation of how the written instrument actually met the requirements of the Act. Moreover, in its heads of argument, the First Respondent has acknowledged that the Applicant's contention raises no factual dispute and can appropriately be determined on the papers by way of motion proceedings.

B. DEED OF SALE VOID – MARRIED IN COMMUNITY OF PROPERTY BUT NO CONSENT OBTAINED FROM THE APPLICANT'S HUSBAND

- [18] The Applicant's second contention is that the deed of sale is void *ab initio* because she did not get her husband's written consent before signing it. The First Respondent disputes this claim in the main application, stating that they were not aware of the Applicant's marital regime and had no reasonable way of knowing about it.¹⁵
- [19] In the interlocutory application, the First Respondent raised the further issue of whether the Applicant's husband ratified the deed of sale, thereby remedying the defect of the absence of his consent. However, this argument was not

¹⁴ Case Lines para 32.5 at 06-16

¹⁵ Case Lines 06-15 at para 32.2

included in the answering affidavit of the main application; it was introduced only in the supplementary affidavit.¹⁶

- [20] Notwithstanding the foregoing, the Applicant, in her answering affidavit to this interlocutory application, demonstrated that there is no factual dispute regarding her marital status at the time the deed of sale was executed¹⁷. Furthermore, whether the First Respondent should have been aware of the Applicant's marital status, or had a duty to ascertain it, are questions of law rather than fact, and therefore do not require determination through oral evidence. Accordingly, the First Respondent has conceded in its heads of argument that this matter may be resolved on the papers before the motion court without recourse to oral testimony.

C. DEED OF SALE LAPSED THROUGH EFFLUXION OF TIME AND NO EXTENSION GRANTED

- [21] Regarding the Applicant's claim that the deed of sale lapsed due to time expiry without a written extension, the First Respondent disputes this in its Answering Affidavit.¹⁸ This subject addresses the interpretation of the deed of sale, with emphasis on legal analysis rather than factual controversy. The issues of further payment and waiver, first raised in the interlocutory affidavit, are also legal questions. The First Respondent similarly conceded that the matter can be dealt with based on the documents before the motion court, without oral evidence.

D. CANCELLATION OF DEED OF SALE AS RESULT OF BREACH

- [22] The First Respondent asserts that the primary factual issue arises from whether the deed of sale was cancelled as a result of its breach. It strongly disputes the Applicant's claim that the deed of sale was cancelled due to the First Respondent's breach.¹⁹ This dispute revolves around the legitimacy of the cancellation, any unpaid portions of the purchase price, and the responsibility

¹⁶ Case Lines 08-9 at para 13.6

¹⁷ Case Lines 10-51 at para 3.1 – 13.16

¹⁸ Case Lines 10-13 at para 13.11

¹⁹ Case Lines 10-12 at para 13-6 onwards

for municipal charges and property damage. In this interim application, the First Respondent contends that addressing these matters is essential to determining whether the full purchase price was remitted and whether the Applicant lawfully terminated the agreement.

[23] The First Respondent claims that the cancellation argument involves significant factual disputes. Although the cancellation is uncontested, the matter for determination is whether the Applicant possessed the proper grounds to execute the cancellation.

[24] The fourth contention rests on the allegation that, as of *7 December 2023*, the First Respondent was in breach of the deed of sale by failing to remit the full purchase price of the property to the Applicant. This claim serves as an alternative to declaring the deed of sale void. The Applicant claimed that she rescinded the deed of sale on *18 December 2023* in response to the breach. Conversely, the First Respondent contends that the entire purchase price had been paid as early as 1 June 2017.²⁰

[25] The First Respondent asserts that, as of the date of its answering affidavit in the main application, it has paid a total sum of *R6 640 962.34* to the Applicant, the mortgagee (FNB), and the municipality (the City of Johannesburg) towards settling the Applicant's indebtedness concerning the property. Nevertheless, the Applicant contests this claim.

[26] A dispute accordingly exists regarding whether the First Respondent had fully paid the purchase price at the time the Applicant sought to terminate the deed of sale.

[26.1] The First Respondent's Particulars of Claim and the Applicant's Affidavit set out all the payments made.²¹ It lists four different amounts pleaded in the *alternative* with four different payment dates.²² These payments and dates are factual evidence. This court do not believe that oral evidence and argument will alter the facts.

²⁰ Case Lines 06-16 at para 33.1

²¹ Case Lines 10-35

²² Case Lines 10-30

[27] Among the amounts included in the total amount of R6 640 962.34 paid towards the property, the First Respondent lists an R111 720.00 payment made by Aucor Corporate (Pty) Ltd to the Applicant at its instruction. The First Respondent claims this relates to a failed sale to a Mr. Varoy and was part of a deposit previously paid on his behalf. The Applicant disputes this, arguing the sum was unrelated to the property's purchase price and was a personal payment from an unrelated transaction.

[27.1] The allocation of the amount is uncontested and does not constitute a factual issue and can be substantiated by documentary evidence.

[27.2] Any set-off of the arrear rental amount is subject to the existence of a liquidated debt. Based on the First Respondent's own statements, it is not established whether the debt meets the criteria for being considered liquidated. Accordingly, this issue remains a matter for interpretation.

[27.2.1] In *Wille, Principles of South African Law, 8th Edition* 483, the requirements for set off are as follows:

'The four conditions for set-off to operate are that both debts must be (i) of the same value, (ii) liquidated, (iii) fully due, and (iv) payable by and to the same persons in the same capacity.' (emphasis added)

At page 484 of *Wille*, the author states that no set off takes place where one, if not both, of the debts is unliquidated in the sense that they are not capable of speedy and easy proof (See also: LAWSA Volume 19 paragraph 255 (d))

[28] The entitlement of the First Respondent to include the amount of R111 720.00 among the sums paid to the Applicant as part of the purchase price is contested by the parties.

[29] Nonetheless, the First Respondent's arguments about the R111 720.00 - whether owed or its purpose - do not ultimately assist. The Applicant cancelled

the contract citing *R133 436.65* as outstanding, excluding over *R1 000 000.00* in municipal charges on the bond. Even if *R111 720.00* was paid toward the property, on both parties versions there was still an unpaid bond amount.

[30] The First Respondent also subtracted *R823 670.00* from the property's purchase price, asserting that this amount was owed by the Applicant due to a lease agreement. The Applicant denies owing any such debt and challenges the necessity of renting the property. In her replying affidavit, she further asserts that she was compelled to sign the lease agreement solely for the purpose of conferring tax benefits upon the First Respondent.

[31] The First Respondent argues that a factual dispute exists regarding the *R823 670.00* rental amount allegedly set off against the purchase price. However, this is not a factual issue, but a legal one; whether set-off occurred depends on interpreting the contractual terms and assessing whether the debt is liquidated.

[32] The Applicant asserts entitlement to cancel the deed of sale, citing alleged property damage caused by the First Respondent as well as unreimbursed legal expenses amounting to *R2 600 000.00* and *R150 000.00*. The Applicant contends that the First Respondent's breaches have not been remedied.

[33] The First Respondent argues that even if property damage is shown, it does not violate the deed of sale. However, if the court was to rule differently, it also challenges the amount of damages claimed. A court has to determine:

[33.1] whether damage to the property qualifies as a breach of the deed of sale - (interpretational issue)

[33.2] whether the Applicant had grounds to cancel because of the property damage - (which the First Respondent itself has acknowledged)

[34] The Applicant argued that uncertainty and confusion about payment of the purchase price arises from the First Respondent's papers, as the First Respondent lists four different amounts and payment dates. The presentation of varying dates and amounts indicates that the matter at hand is not grounded in factual disputes. Rather, these discrepancies arise from alternative

interpretations of the available information. It is merely a question of determining whether the First Respondent paid the amounts.

[35] The First Respondent further argues that before the Applicant can cancel the deed of sale due to property damage, it must first be established as a breach of agreement. Even if the court finds a breach, the extent of the damages is disputed, unproven in the submitted documents, and would require oral evidence to resolve.

[36] The degree of damage that may require oral evidence does not matter; what matters is whether the Applicant was entitled to cancel the agreement based on the actions of the First Respondent.

[37] The First Respondent has remitted a sum of money, which can be substantiated through documentary evidence provided as annexures. Whether this amount constitutes the entire purchase price is not an issue that can be resolved by additional evidence from either the First Respondent or the Applicant. Rather, this question hinges on the interpretation of the contract.

[38] It is abundantly clear that the fact that the Applicant cancelled the agreement is undisputed; the only dispute concerns whether the cancellation was legally valid. The Applicant cited unpaid municipal charges and property damage as grounds for the cancellation. The First Respondent admitted the outstanding municipal rates and tendered to pay them.²³ This is tantamount to conceding indebtedness.

[39] The First Respondent admits to occupying the property, taking steps to prevent further damage, and offering to pay the outstanding municipal charges. The Applicant asserts that she had sufficient uncontested grounds to cancel the agreement.

[39.1] It is important to note that the Applicant has not been in occupation of the property since 2014. Clause 3 of the deed of sale is predicated on the Applicant's occupation of the property.²⁴ It states that if the Applicant as seller occupied the

²³ Case Lines 06-26 at para 44

²⁴ Case Lines 02-58

property, she would be responsible for all maintenance, upkeep, and payment of rates, taxes, and services—including electricity, water, sewerage, refuse collection, and Telkom accounts—by their due dates.

[39.2] According to clause 4 of the deed of sale,²⁵ the Applicant's attorneys were required to complete the transfer as soon as all parties had met the agreement's terms. The First Respondent was required to sign any documents needed for the transfer when requested. If the First Respondent (purchaser) caused any delays leading to additional costs, those expenses would be its responsibility.

[39.2.1] Any delay in transfer as a result of the First Respondent, results in it having to pay additional costs.

[40] The issue to be determined is whether the disputes raised by the First Respondent constitute "*material disputes of fact*" that justify referring the matter to trial, or at minimum, for oral evidence. This requires careful consideration of the nature of these factual disputes and an assessment of whether those put forward by the First Respondent align with such criteria.

NATURE OF DISPUTES OF FACT

[41] The main contention between the parties centres around the status of the deed of sale – is it void *ab initio* alternatively if it existed, whether it was cancelled.

[41.1] The Applicant seeks that the deed be declared void *ab initio* *alternatively* cancelled;²⁶

[42.2] The First Respondent in action proceedings seek the transfer of the property *alternatively* repayment of amounts paid.²⁷

²⁵ Case Lines 02-58

²⁶ Case Lines 02-1

- [42] On the First Respondent's own version as set out in his heads of argument the only issue on which a dispute of fact exists, is in respect of and pertaining to the Applicant's cancellation of the contract.
- [43] In this regard the First Respondent has merely stated that there exists a dispute on the papers whether the First Respondent has paid the full purchase price as contemplated in the deed of sale and in respect of the total amount that the First Respondent has paid to date.²⁸
- [44] By invoking Rule 6(5)(g), the deponent to the First Respondent's answering affidavit must:
- [44.1] set out the import/relevance of the proposed evidence (via cross-examination of the Applicant's deponents or other witnesses);
 - [45.2] explain why this evidence is unavailable; and
 - [45.3] demonstrate that there are reasonable grounds to believe the defence could be established.²⁹
- [45] In the present case, the First Respondent did not meet any of the requirements. The First Respondent's statement that the matter should be properly ventilated and decided through oral evidence is insufficient.³⁰ The First Respondent's affidavit omits to:
- [45.1] specify what type of positive information (evidence) is missing or explain why it could not be submitted to the court in affidavit form;
 - [45.2] explain the unavailability of the evidence;
 - [45.3] establish the reasonableness of the First Respondent's defence.
- [46] As stated, the only issue on which - according to the First Respondent itself - a dispute of fact exists, is that pertaining to the Applicant's cancellation of the contract. In this regard the First Respondent has merely stated that:

²⁷ Case Lines 10-18

²⁸ Case Lines 13.8

²⁹ Minister of Land Affairs and Agriculture v D&F Wevell Trust 2008 (2) SA 184 (SCA) at para [56].

³⁰ Case Lines 10-14 at para 13.12

*“there exists a dispute on the papers whether the first respondent has paid the full purchase price as contemplated in the deed of sale and the total amount that the first respondent has paid to date.”*³¹

- [47] In *Metallurgical & Commercial Consultants (Pty) Ltd v Metal Sales Co (Pty) Ltd* 1971 (2) SA 388 (V) at 396E-G the court held that it had a wide discretion to refer a matter to trial in the following passage:

“I have a wide discretion in that regard, but it should be exercised in accordance with principle. And the relevant principle to be applied, I think, is this: It is the respondent who would fail on the disputed issue if it fell to be decided on the papers; an oral hearing is being granted at its instance, in order to afford it an opportunity of altering, if it can, the incidence of the probabilities as they emerge from the papers, and of displacing the inference which flows from the signed document. Thus, as matters now stand, the applicant needs no oral evidence to strengthen its case; it will need such evidence only if and when the respondent creates, prima facie, a balance of probability in its favour. There is no reason why I should compel anyone to testify. What I should do is to give the respondent the opportunity which it has sought, and to give the applicant an opportunity of answering, if it wishes the case made out by the respondent. The order which follows is based on that approach.”

- [48] A real, genuine and italicised dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed.

- [49] In *Frank v. Ohlsson’s Cape Breweries Ltd.*, 1924 A.D. 289 at p. 294, INNES, C.J., said:

“... But where the facts are really not in dispute, where the rights of the parties depend upon a question of law, there can be no objection, but on the contrary a manifest advantage in dealing with the matter by the speedier and less expensive method of motion.”

³¹ Case Lines 10-12 at para 13.8

[50] In order to determine matters on motion, a Court must decide whether a real and genuine dispute of facts exists. The question always is whether there is a real issue of fact which cannot be determined without the aid of oral evidence. A safe test is whether the Applicant is entitled to relief on the facts stated by the First Respondent, together with the admitted or undisputed facts stated by the Applicant.

[51] A real dispute of fact can arise in one or other of the following ways:

[51.1] Where the court is satisfied that the party who purports to raise the dispute has in his or her affidavit seriously and unambiguously addressed the fact said to be disputed.

[51.2] The First Respondent may deny one or more of the material allegations made on the Applicant's behalf and produce evidence to the contrary or apply for the leading of oral evidence of witnesses who are not presently available or who, though averse to making an affidavit, would give evidence if subpoenaed.

[52.3] The First Respondent may admit the Applicant's affidavit evidence but allege other facts, which the Applicant disputes.

[52] In all cases, the court must assess whether there is a genuine dispute of fact that cannot be properly resolved without oral evidence. Without this scrutiny, a Respondent could fabricate issues of fact simply to delay proceedings, ultimately disadvantaging the applicant.³²

[52.1] *"That conflicting affidavits are not a suitable means for determining disputes of fact has been doctrine in this court for more than 80 years. Yet motion proceedings are quicker and cheaper than trial proceedings and, in the interests of justice, courts have been at pains not to permit unvirtuous respondents to shelter behind patently implausible affidavit versions or bald*

³² Fakie NO v CCI Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at 347G-H; National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA) at 290F.

denials. More than 60 years ago, this Court determined that a Judge should not allow a respondent to raise 'fictitious' disputes of fact to delay the hearing of the matter or to deny the applicant its order. There had to be "a bona fide dispute of fact on a material matter". This means that an uncreditworthy denial, or a palpably implausible version, can be rejected out of hand, without recourse to oral evidence."³³

[53] A dispute of fact cannot be established on insubstantial, immaterial, or vague allegations. In *Da Mata v Otto* NO 1972 (3) SA 858 (A) at 882G-H, the court stated:

"In the preliminary enquiry, i.e., as to the question whether or not a real dispute of fact has arisen, it is important to bear in mind that, if a respondent intends disputing a material fact deposed to on oath by the applicant in his founding affidavit or deposed to in any other affidavit filed by him, it is not sufficient for a respondent to resort to bare denials of the applicant's material averments, as if he were filing a plea to a plaintiff's particulars of claim in a trial action. The respondent's affidavits must at least disclose that there are material issues in which there is a bona fide dispute of fact capable of being properly decided only after viva voce evidence has been heard."

[54] Generally, factual determinations may appropriately be based on an assessment of the probabilities, provided that the court is confident that oral testimony would not alter the balance of probabilities as reflected in the affidavits.³⁴

[55] Trial referral is unjustified since the First Respondent has not shown that oral evidence or a trial would resolve the disputes. These measures would not assist the court, as the issues do not rely on assessing probabilities or need more evidence.

[56] Accordingly, when assessing whether a real dispute of fact exists, courts must be vigilant not to allow technicalities or unsubstantiated contentions to obstruct

³³ *Fakie NO v CCI Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at para [55]

³⁴ *Administrator, Transvaal v Theletsane* 1991 (2) SA 192 (A) at 197A-B.

the expeditious resolution of matters capable of determination on motion. The underlying principle is to strike a balance between procedural efficiency and the interests of justice, ensuring that only genuine and material disputes requiring oral evidence are referred for trial. If the court is satisfied that no such *bona fide* dispute exists, it is both competent and appropriate to decide the matter on the affidavits before it.

[57] The dispute of fact in respect of the fourth contention - the cancellation of the deed of sale - is whether the First Respondent has paid the full purchase price as contemplated in the deed of sale and in respect of the total amount that the First Respondent has paid to date.

[57.1] It is important to note that the Applicant's claim is reliant upon the voidness of the deed of sale and that she only seeks cancellation of the deed as alternative relief.

[57.2] If the deed of sale is found to be void *ab initio* then the cancellation of the deed of sale does not even come into consideration.

[58] The First Respondent has not clarified to the court what specific positive evidence it wishes to present through oral testimony, nor has it explained why this evidence cannot be provided in an affidavit.³⁵ Additionally, the First Respondent did not identify the witnesses it intends to call for examination during action proceedings. It's also unclear how the leading of witnesses on behalf of the First Respondent would benefit the resolution of the cancellation of the deed of sale.

[59] The First Respondent was required to demonstrate to the court the existence of a *bona fide* factual dispute on a material issue. By failing to disclose affirmative evidence and to explain why such evidence cannot be evaluated on affidavits, the allegations made by the First Respondent remain imprecise and unsubstantial.³⁶

[60] The issue of payments made in respect of the purchase price is clearly capable of being established on affidavit by means of documentary evidence.

³⁵ Minister of Land Affairs and Agriculture v D&F Wevell Trust 2008 (2) SA 184 (SCA)

³⁶ King William's Town Transitional Local Council v Border Alliance Taxi Association (BATA) 2002 (4) SA 152 (E) at 156I-J,

- [61] In summary, the onus rests on the party alleging a genuine dispute of fact to provide sufficient detail and clarity to enable the court to determine whether such a dispute truly exists. The court must be satisfied that the dispute is not illusory or contrived for the purposes of delaying the proceedings. Where the affidavits and supporting evidence are inadequate in this regard, the court is entitled to resolve the matter on the papers before it, without the need for oral evidence or referral to trial.
- [62] The referral to trial in this matter is unwarranted because the First Respondent hasn't met the requirements of demonstrating that the alleged disputes could be resolved through oral evidence or trial court proceedings. Even if oral evidence is lead or a referral to trial is ordered, this court believes that it would serve no purpose because the issues at hand don't rely on probabilities but on the evaluation of legal debate.

JUSTICE IN REFERRAL TO TRIAL AND CONSOLIDATION WITH ACTION

- [63] In its heads of argument, the First Respondent maintains that should the court rule in favour of the Applicant on any of the initial three contentions—where the First Respondent concedes there is no factual dispute—it would then be entitled to rely on a claim for funds previously paid to the Applicant.³⁷
- [64] The First Respondent with reference to the Applicant's affidavits stated that:
- [64.1] the Applicant is a foreign peregrinus resident in Taiwan;
 - [64.2] the Applicant is experiencing financial difficulties and can most likely not afford the legal costs associated with a trial; and
 - [64.3] the Applicant is not in good health having chronic kidney failure and type 2 diabetes.
- [65] The First Respondent further claimed that, due to the circumstances described above, there is a genuine and considerable risk that, when the court ultimately decides the amount the Applicant must repay to the First Respondent under its *alternative* claim, the First Respondent may encounter serious challenges in

³⁷ Case Lines 15-12 at para 31

recovering this sum from the Applicant and might have to bear substantial costs in attempting to do so.

- [66] To protect the First Respondent, it would need to obtain an order attaching and preserving the property. This would ensure that the property could eventually be sold and the First Respondent would be compensated from the proceeds.
- [67] In other words, if the Applicant is successful in the first, second, or third contentions, the First Respondent would incur further legal costs to attach the property and preserve the *status quo*. However, the Applicant would not be entitled to sell or change the current state of affairs regarding the property, depending on the order granted.
- [68] As a consequence, the First Respondent feels that the procedures should be consolidated to "*protect the [first respondent] against being without recourse*", "*curtail further legal costs*" and "*to ensure justice is done*".
- [69] I agree with the Applicant's counsel that avoiding a trial would resolve the issue sooner and save trial costs. This does not cause injustice, as the First Respondent still has remedies. If the court found in the Applicant's favour the First Respondent cannot claim the property as security since it will hold no rights to it. If the Applicant's relief is granted, the motion court will require repayment of any money paid *sine causa*. This point is therefore moot.

TRANSFER OF PROPERTY SOUGHT IN ACTION AND PRESCRIPTION

- [70] The First Respondent, as Plaintiff, seeks transfer of the property to its name, asserting it has paid the full purchase price and fulfilled the sale agreement.
- [71] The First Respondent presents four alternative dates on which it may have fulfilled its obligations, based on its view that four separate payments could each satisfy the payment requirements. The Particulars of Claim specify these dates as 1 June 2017, *alternatively* 1 October 2017, *further alternatively* 1 August 2019, and *further alternatively* 1 December 2019.
- [72] The First Respondent's request to transfer ownership of the property into its name is considered a "*debt*" under the Prescription Act 68 of 1969, which

means that the debt became due on any one of the four dates mentioned earlier.

[73] A claim to transfer immovable property in the name of another is a claim for specific performance. It is a claim to deliver goods in the form of immovable property – it is a debt as accepted in *Makate v Vodacom Ltd 2016 (4) SA 121 (CC)* and *Makate v Vodacom (Pty) Ltd [2014] ZAGPJHC 135*.

[74] The Constitutional Court in *Ethekwini Municipality v Mounthaven (Pty) Limited, 2019 (4) SA 394 CC* in dealing with prescription relating to immovable property, stated the following:

"In terms of the dictionary meaning of 'debt' accepted in Makate, an obligation to pay money, deliver goods, or render services is included under the definition and would prescribe within three years under the Prescription Act. Material or corporeal goods consist of property, movable or immovable. Ownership of movable corporeal property is transferred to another by delivery, actual or deemed, of the goods. That is practically impossible in the case of immovable property like land. Hence it is an accepted principle of venerable ancestry in our law that the equivalent of delivery of movables is, in the case of immovable property, registration of transfer in the Deeds Office. A claim to transfer immovable property in the name of another is thus a claim to perform an obligation to deliver goods in the form of immovable property. It is a 'debt' in the dictionary sense accepted in Makate. It really is as simple and straightforward as that."

[75] The First Respondent served summons on the Applicant on 22 May 2024, over three years after the alleged debt became due, regardless of which date is considered as correct.

[76] The Applicant has raised this as a special plea to the First Respondent's claim.

[77] Since the First Respondent's claim for property transfer is barred by prescription, it can only pursue its *alternative* claim of unjustified enrichment. This does not justify sending the Applicant's requested relief to trial or consolidating the actions.

EXPEDIENCY AND DELAY

- [78] The Applicant's assertion that the contract is *void*, or *alternatively* has expired due to the passage of time, is suitable for consideration in a motion court. The First Respondent maintains that the only matter requiring oral evidence pertains to the cancellation of the sale.
- [79] In the Applicant's heads of argument the Applicant argued that if the matter goes to trial, the Applicant will have to seek a court order to have three of its four contentions heard as separate issues under Rule 33(4) of the Uniform Rules of Court. This separation could resolve the case well before trial. Referring the matter to trial would therefore only cause unnecessary delay. I believe that there is merit in this argument.
- [80] Given the special plea of prescription raised by the Applicant, most of the purported "*dispute*" can clearly be resolved in the motion court.
- [81] In light of the foregoing, the First Respondent's contention that referring the matter to trial would result in a just and expeditious resolution, thereby ensuring justice is achieved with minimal delay, is without any merit.

CONCLUSION:

- [82] Based upon the First Respondent's assertion that three of the contentions raise no dispute of fact and is capable for resolution in motion proceedings, it is clear that only the cancellation of the deed of sale is allegedly in dispute.
- [83] The cancellation of the deed of sale is sought as an *alternative* to the claims that the deed of sale is void *ab initio*.
- [84] If the court in the main application determines that the deed of sale is void, this would result in the repayment of the purchase price, equating to the relief sought in the First Respondent's action.

- [85] It is unclear how the motion court can address the voidness of the deed of sale and the repayment of the purchase price, yet cannot similarly consider the cancellation and the related payments made in respect of the purchase price.
- [86] This court is further of the opinion that the timing and amounts of the payments in question may be established by reference to documentary evidence, which can be appropriately addressed and assessed in the motion court.
- [87] A referral to trial court is unwarranted where the speedier and less expensive method of motion court is available to assist the parties to resolve the matter.
- [88] The cancellation of the deed of sale is furthermore an issue which will only arise once the court establishes that the deed of sale was not void. The voidness of the deed of sale is capable of resolution and being fully ventilated in the motion court. It appears unreasonable to refer the application to trial on an *alternative* claim - specifically, the cancellation of the deed of sale - which may ultimately prove irrelevant if the main relief is granted.
- [89] The alleged factual dispute, in respect of the cancellation of the deed of sale, raised by the First Respondent is also not supported by an affidavit specifying and setting out seriously and unambiguously the following:
- [89.1] what type of positive information (evidence) is missing or presenting any explanation why it could not be submitted to the court in affidavit form;
- [89.2] giving a satisfactory explanation of the unavailability of the evidence and
- [89.3] establishing the reasonableness of the First Respondent's defence.
- [90] In the premises, this court accordingly concludes that the matter is capable of resolution in its totality on motion and make the following order:

Order

- [1] The First Respondent is permitted to file the supplementary affidavit deposed to by Mr. Wolfram Carl Helmuth Landgrebe on 5 June 2024.
- [2] The First Respondent's application under the above case number for referred to trial as contemplated in rule 6(5)(g) of the Uniform Rules of Court is dismissed with costs on a party and party scale B.

S VAN ASWEGEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Hearing date: 19 May 2025

Delivery date: 20 November 2025

For the Applicant:

Adv DC du Plessis
Instructed by EW Serfontein and Associates
Inc.
Tel: 012 344 6353
Email: dian@serfonteinatt.co.za

For the First Respondent

Adv R Bekker
Instructed by John Isabelle Attorneys
Tel: 082 571 5070
Email: john@isabelle.co.za

