

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES: NO
 (3) REVISED: YES

02/01/2026
 DATE


 SIGNATURE

CASE NO: 16182/2018

In the matter between:

RONALD McKENZIE HERRIDGE

1st Plaintiff

LUSINDA ELIZABETH HERRIDGE

2nd Plaintiff

and

LAWRENE ELIZABETH JORDAAN

1st Defendant

LOUIS JORDAAN

2nd Defendant

JORDAAN BUSINESS ENTERPRISES (PTY) LTD

3rd Defendant

JUDGMENT

(The matter was heard in open court and judgment was reserved. The judgment was uploaded onto the electronic file of the matter on CaseLines and the date of uploading the judgment onto the electronic file of the matter and Caselines is deemed to be the date of the judgment).

BEFORE: HOLLAND-MUTER J:

[1] The dispute before the court has its origin from what purports to be agreement of Sale of Shares, but is in fact a disguised sale of portion of a farm as described in the “*principal agreement*” which was entered into by the parties during January 2013.

[2] The agreement was entered into by the plaintiff and his wife (the purchasers) and the defendant and his wife, and the private company called Jordaan Business Enterprises (the sellers). The plaintiffs acted in their personal capacity with Jordaan and his wife also acting in person. Jordaan (second defendant) acted on behalf of the third defendant, Jordaan Business Enterprises Pty Ltd (referred to as JBE), JBE being a private company. The agreement was for the purchasing of 60 (sixty) shares in the JBE by the purchasers. The Seller (first and second defendants) holds the entire share capital of the third defendant, JBE. The merx (object) of the sale agreement at first glance at the written agreement seems to be 60 shares in JBE at a price of R 250 000-00 per share. The total value of the merx is R 15 000 000-00 of the entire issued share capital and all shareholders loan accounts and claims against JBE.

[3] The written agreement is the cause of uncertainty because of contradicting terms, vague description of the merx(s) and apparent lack of consensus between the parties on specific issues or terms of the agreement. It is trite that the requirements for a valid contract of sale to come about between parties, there must be consensus that the agreement is a contract of sale of a specific item, that the merx (item/object being sold/property being sold) is certain and that the purchase price is fixed.

[4] In this matter the requirement regarding the merx is the cause of concern. It hovers between the sale of 60 shares (the total number of shares in the company not indicated in the agreement or discussed by the parties prior to signing the agreement) and the sale and transport of immovable property (a portion of the farm). The most likely agreement between the parties is that the agreement was for the sale of a portion of the farm described as the ***Remainder of the farm Buffelshoek 954, Registration Division JG, held under Title Deed T 156250/2005 by the seller*** (clause 1.18 in the written agreement). Clause 3.1.6 of the agreement states that the purchaser will be purchasing this property over a period of 5 years. Property in the agreement (clause 1.18) means the remainder of the farm Buffelshoek. This is a further indication as to what was the object of the sale.

[5] The heading of the agreement clearly states to be a **Share Sale Agreement**. The merx of agreement at first glance is the 60 shares in JBE. Although the agreement is for the sale of 60 shares, it contains other terms regarding the transfer of the property (a portion of the farm) and provides for a subdivision of the property along an identified line across the property. There is no indication of the total number of shares held by the defendants in JBE or how future shareholders meetings will take place with the purchasers as new shareholders. No Shareholders Agreement was in place at any time.

[6] Parties are bound to a written agreement and cannot in general rely on other evidence or terms around the agreement to prove the real consensus between them. The *parol evidence rule* does not allow parties to prove terms not pleaded unless rectification of the agreement was sought. See **Tesven CC v SA Bank of Athens [1999] 4 All SA 396 (A), 2000 (1) SA 268 (SCA)**. Rectification was not sought in this matter. It came to light during evidence that the object to be sold was not the sale of shares but the sale of a portion of land (the existing farm to be sub-divided into 2 portions) as part of the obligations placed on the purchasers. This is the most likely interpretation of the intention between the parties if the further obligation on the purchaser to sub-divide the property is taken into account. Parties are allowed to testify and explain the terms of an

agreement where the terms are vague or in contradiction with other terms in the same agreement.

[7] Contrary to what was argued on behalf of the defendants that the issue of the sub-division was to be dealt with in future (par 5.3 of the heads of arguments), clause 3.1.5 of the agreement stipulates that the Purchasers shall be purchasing this Property over a five year period. The Property is defined as The Farm known as the Remainder of the farm Buffelshoek 954, Registration Division JQ. This can only be interpreted to mean a portion of the land. The alleged Sale of Shares is therefore an attempt to disguise the true nature of the agreement.

[8] A further confirmation of the real intention of the parties is found in **Exhibit “K”**. This is the letter dated 26 September 2017 on behalf of the defendants to the plaintiffs where the plaintiffs are reminded that no indication of the proposed sub-division of the property was being initiated by the plaintiffs and that the term of the contract ends on 31 January 2018 and that no extension of time will be provided by the defendants. The only inference from the letter is that the sub-division had to be completed before the agreement ran out and that the sub-division was not as argued on behalf of the defendants a future aspect (see above reference to the written heads of arguments obo the defendants in par 5.3 thereof). This further proves that the agreement was for the sale of land and that the sale of shares was a disguise.

[9] The *parol evidence rule* consists of two branches independent rules or sets of rules. These are (i) the integration rule which defines the limits of the contract and (ii) the interpretation rule which determines when and to what extent extrinsic evidence may be adduced to explain or affect the meaning of the words contained in a written contract. **University of Johannesburg v Auckland Park Theological Seminary and Others 2021 (6) SA 1 CC at [90]**. The court allowed evidence by the parties to clarify certain murky issues regarding the terms of the agreement but this did not alter or brought about “terms” not contained in the

agreement. It was to explain the existing agreement with regard to sale of shares or property (clause 1.18) and the sub-division envisaged.

[10] The plaintiffs pleaded the contract to be illegal for reason of the contravention of Section 3 and 4 (2)(b) of the **Subdivision of Agricultural Land Act, no 70 of 1970 (the Act)**. The defendants' argument that the sub-division was for the future cannot succeed. This is contrary the letter of demand (**Exhibit "K"** supra) on behalf of JBE dd 28 September 2017 to the plaintiff demanding completion of the sub-division of the property before the time span of the agreement to be completed. In view of the weight of the evidence, the actual agreement was the sale of a portion of the farm after sub-division, then the non-compliance to obtain prior consent by the Minister before the agreement was completed, renders the agreement *ab initio void*.

CONTRACTUAL PRINCIPLES:

[11] The parties must have reached consensus of what was the subject of the agreement i.e the sale of land (portion of the farm) or sale of shares and the price must be fixed. The closest the parties ventured to consensus was the price, but the price in the written agreement was for the sale of 60 shares. There is further no clear description of the land but for clause 1.18 what was to be sold to the purchaser. The imaginary line drawn in clause 4.1.2 of the written agreement where the sub-division should be does not justify the agreement to be the sale of shares. As a matter of interest the argument on behalf of the defendants in par 32 and further in the written heads of arguments seems to be a mistake as there is no clause 4.2.1 in the agreement. Most likely reference is made to clause 4.1.2 and 4.1.3 of the agreement.

[12] In any event the second defendant testified that the plaintiffs were in breach as early as in 2014 but that the breach was corrected. The letter of 26 September 2017 (Exhibit 'K') according to the second defendant, should not be seen as a demand to correct a breach but a mere reminder that time was running out to

complete the sub-division. This letter clearly contradicts any suggestion that the sub-division was for future after the agreement was finalised. This letter is a further indication that the sub-division was part of the agreement and can only strengthen the inference that the agreement was for sale of land.

[13] The parties are identified in the written agreement, the price is fixed but the merx remains uncertain. The written agreement starts off with the number of shares to be transferred, the value thereof etc. It is only towards the latter terms of the agreement in clause 11.3 that the agreement stipulate that ***“It be known that the purchaser is purchasing the remaining farm 954 Buffelshoek, and not the Silver Creek Gorge Estate...”*** This description of the land does not meet the requirements of identifying land in a contract of sale. The property refers to the farm known as the ***Remainder of the farm Buffelshoek 954, Registration Division JQ, held under title deed T156250/2005 by the Seller (Clause 1.18 of the written agreement)***. There can be no doubt from the above that the real merx was the remainder of the farm and not the shares.

[14] There is no indication of the size of land purportedly to be purchased from the seller, but this may be an indication that the real intention between the parties is the sale of the remaining portion of the farm after the envisaged sub-division of the farm along the line along the runway south east of the hangers and not the shares. This deepens the plot of what the true intention of the parties was.

[15] The provisions in clause 4.1.2 places the obligation on the purchaser to have the property sub-divided on the imaginary line which runs behind the hangers to the south-east of the hangers before the agreement is finalised. This line was indicated during evidence on an aerial photograph of the farm. The only reasonable inference from this clause is nothing else but the purchaser had the obligation to have the farm sub-divided as part of the agreement. Sub-division of the farm can hardly be part of an ordinary contract for the sale of shares. The only reasonable inference is that the parties wanted to enter into a sale of land

agreement but became strangled in an agreement drafted by a legal professional who lost the basic plot along the line trying to provide for almost everything that possibly from the law of contract.

[16] If the true intention of the parties was that the merx was the remaining portion of the farm Buffelshoek, the failure to comply with the provisions of the **Sub-Division of Agricultural Land (supra)** renders the agreement *ab initio void*. To determine the true meaning of a written agreement the court may hear evidence as to the context of the language used by the parties and the context in which the provisions appear. In this matter the court allowed evidence by the witnesses regarding what transpired when the parties met and how they approached the agreement. See **Natal Joint Municipal Pension Fund v Edumeni Municipality 2012 (4) SA 593 (SCA) par [18]**. A similar dictum is found in **Capitec Bank Holdings Ltd v Coral Lagoon Investments 194 (Pty) Ltd 2022 (1) SA 100 (SCA) at par [38]**.

[17] The appointment of a conveyancing attorney (clause 1.5) for the transfer and registration of the concerning the property of the company can only be to complete the transfer of the property after the sub-division is completed. There is no need to appoint a conveyancer when shares are transferred, more likely a notary to complete such transfer.

[18] If the agreement was for the sale of shares, one would have expected that there would have been minutes of shareholders meetings as required in the Company Act and some indication of what the position of the purchasers as new shareholders were. The updating of the share register must place when shares are sold. In this matter nothing of kind is mentioned or has taken place. For five years nothing transpired to support any submission that the true intention of the parties was the sale of shares.

[19] There is no indication of any annual reports etc on behalf of JBE. There is no indication of profit sharing between the shareholders which further supports the

inference that the true intention of the parties was the sale of a portion of the farm. There is no indication how JBE would be managed after the sale of shares, how the shareholders meetings will take place and the aggregate of shareholding. It was only during the second defendant's evidence that it came to light that the total shareholding was 100 shares, resulting in the plaintiffs becoming the majority shareholders. The reasonable inference from this is that the defendants never intended relinquishing any shareholding in JBE and that the plaintiffs were purchasing the remainder of the farm as set out in clause 1.18 of the agreement.

[20] A further indication that the agreement was indeed the sale of a portion of the farm is the institution of a counterclaim by the defendants. If the agreement was the sale of shares there can be no basis for such claim relying on the plaintiff taking occupation of the farm. Occupation is only possible if the underlying intention was the sale of the farm. If the purchasers were shareholders, the defendants had equal rights as shareholders of JBE; retaining the rights they enjoyed previously as shareholders. This included the right of occupation as before. The whole basis of the counterclaim based on occupation by the purchasers evaporates because there is no indication what the various shareholders' obligations and rights were. The defendants have no claim of kind against co-shareholders for damages as formulated in the counterclaim. JBE might have a claim against all shareholders for failure to comply with basic company law.

[21] The underlying intention of the parties favours the sale of land to the purchasers. If all the evidence and pleadings are considered, the reasonable inference can only be that the parties intended the agreement to be an agreement of sale of land (as described in clause 1.18 of the written agreement). To that extent the evidence by both parties as to the intention of the parties, including the underlying sub-division obligation on the purchasers can only be that of sale of land. This accepted, the non-compliance with the statutory requirement of the provisions of section 3 and 4(2)(b) of the Subdivision of Agricultural Land Act 70 Of 1970 renders the agreement invalid (null and void).

[22] The defendants had no intention to deliver any share certificates to the purchasers and the second defendant could not give any explanation during evidence of this breach from their side if the agreement was the sale of shares. This “breach” further explains the true intention of sale of land.

[23] The second defendant did not impress as a witness. He had no explanation why the share certificates were not delivered as stipulated in the agreement. He could not account for who received the continued income from the occupiers of certain of dwellings on the farm as from date of the agreement until termination of the agreement. There is no evidence by the defendants of any crops under the second pivot repaired by the plaintiff. There was no evidence by the defendants of any crops managed by the defendants before, during and after the agreement. The listing of game on the farm was randomly done without any counting thereof and to further illustrate the unreliability thereof is the listing of 30 jackal as part of the exchange. To include jackal at a fixed price in the list is illustrative of the absurdity thereof.

[24] The evidence by the expert Mr van Zyl is a mere grasp in the air based on no substantive evidence that the defendants in fact utilized the farm to any extent but for the lawn business under the one pivot. There is no evidence that the defendants or JBE ever intended cattle farming to support any claim for loss of grazing income. The lodge (farm homestead) was fenced off together with the unit occupied by the parents of the first defendant. The plaintiffs had no access thereto. Van Zyl made no contact with any farmers or landowners in the area to have any idea what the going rate for grazing, letting of living units or cultivation of crops were to make any calculation regarding alleged damages. This negates any claim for loss of income as stated in the counterclaim. The second defendant’s evidence was that he was only interested in enjoying the game farm and he had no intention in cattle farming at any stage.

[25] The counterclaim was with respect a mere attempt to scare the plaintiffs and lacks context. It cannot succeed.

[26] The plaintiffs instituted four different claims namely (i) repayment of the amount of R 4 380 050-00 paid to the defendants to date of summons; (ii) payment of the amount of R 305 789-33, the value of the game agreed and listed in Exhibit "G" in exchange for the work done at the runway; (iii) payment of the amount of R 443 061-02 for improvements brought about on the farm during possession thereof; and (iv) the return of certain moveable items brought onto the farm by the 1st plaintiff with the *rei vindicatio*.

[27] The plaintiff during evidence abandoned claim 3 regarding the improvements brought about on the farm. Although certain improvements and maintenance were done by the plaintiff, the plaintiff abandoned it for evidential reasons. It remains unclear whether the runway (claim 2) was completed and tarred as agreed. Although certain work was done on the runway, there was no clear evidence about the exact work done and whether the runway was tarred at all and at what cost this was done. In view of lack of convincing evidence regarding the work done on the runway, an order of absolution of the instance on claim 2 is granted. It remains a fact that the plaintiff did improve the farm regarding updating of dilapidated fences, inserting new droppers in the fences and re-wiring the one out-of-order pivot and coupling a new pump machine to the pivot. The difficulty of the plaintiff was to quantify the improvements.

[28] The 2nd defendant confirmed during evidence that certain movable items brought onto the farm by the 1st plaintiff was there and tendered the return thereof. He invited the plaintiff to collect these items. These items are the Cruiser, two firefighters, three water tanks, three drinking bowls and feeding bowls. The motor pump was apparently stolen and the defendants replaced such with another pump. There can be no dispute that the defendants must return these items.

[29] The 2nd defendant testified that the two giraffes brought to the farm by the plaintiff died and the carcasses were still on the farm and could be removed. No time frame of death of the giraffes was given and it is strange that the carcasses

would still be on the farm after all the years despite carnivores like jackal and other to pray on the carcasses. The defendant argued that the plaintiff only proved that he brought one Nyala bull to the farm. If so, the Nyala should also be returned. The defendant further stated that the ten waterbucks are no longer on the farm, but no reasonable explanation was given to prove this. There is no convincing evidence by the defendant regarding the remainder of the game and the defendant must return the items tendered and at least one Nyala bull.

[30] The critical consideration is that of 1st claim for repayment of the amounts paid by and on behalf of the plaintiffs in terms of the now unlawful agreement. The plaintiffs' claim is for R 4 380 050-00 while the defendants calculated the amounts received to be R 4 395 000-00 (annexure "E").

[31] The question whether the defendants should be ordered to repay the amounts paid over to them by the plaintiffs (or on their behalf) is whether the defendants were enriched at the expense of the plaintiffs. Were the plaintiffs impoverished and if so, are they prevented to claim repayment by the *par delictum rule*.

[32] An illegal contract has to be distinguished from an invalid contract because of non-compliance with statutory formalities and an unenforceable contract. The agreement before court is pleaded to be contrary a law.

[33] The plaintiffs pleaded that the contract was contrary the law the provisions of Section 3 and 4 of the Sub-Division of Agricultural Land Act 70 Of 1970 because no prior consent was obtained from the Minister authorising the envisaged subdivision of the farm into two portions. There is no dispute between the parties that this consent was never obtained. The defendant avers the consent was not necessary because the agreement was not sale of land but sale of shares. It was already held supra that the agreement was for the sale of the remainder portion of the farm (clause 1.18 of the agreement).

[34] The plaintiff pleaded that it was relying on the illegality of the agreement. See **F & I Advisors (Edms) Bpk v Eerste Nasionale Bank van Suidelike Afrika Bpk 1999 (1) SA 515 (SCA); Bekker v Oos-Vrystaat Kaap Koorperasie Bpk [2000] All SA 301 (A).**

[35] The party who has performed in terms of an illegal contract (fully or partly) may reclaim such performance with the *condictio ob turpem vel iniustam causa*. See **First National Bank of South Africa Ltd v Perry NO 2001 (3) SA 960 SCA**. With the contract being illegal, the defendants cannot rely on the clause 3.1.1 and 3.1.2 to withhold any non-refundable deposit.

[36] To succeed with the *condictio* as an enrichment claim, the plaintiff must prove: (i) that a transfer of money (or goods) to the defendant has taken place. (ii) that the transaction was illegal; and (iii) that the defendant was unjustly enriched. See **Albertyn v Kumalo 1946 WLD 529 at 535**. If the contract is invalid, (but not illegal), the cause of action is the *condiction indebiti*.

[37] The defendant can raise the *par delictum rule as defence i e* that the plaintiff was a party to the illegality. **Bhyat's Departmental Store (Pty) Ltd v Dorklerk Invetments (Pty) Ltd 1975 (4) SA 881 (A)**. It is then for the plaintiff to allege and prove facts that will enable the court to his assistance because of justice and public policy so required. **Jajbhay v Cassim 1939 AD 537, Visser v Rousseau NO 1990 (1) SA 139 (A).**

[38] The plaintiffs in pr 4 of the replication to the defendants' replying to par 5 of the defendants' plea, stated that none of the parties were aware of the illegal nature of the agreement. The evidence of the first plaintiff was that after the letter of demand dated 26 September 2017 on behalf of the defendant demanding completing of the sub-division, that he obtained legal advice that the agreement was invalid due to non-compliance of the required consent of the Minister for sub-division. The defendants admitted such in their plea. Both parties at the stage when the agreement was entered into had no knowledge of

the illegality of the agreement. This knowledge was only obtained after the letter of 26 September 2017. Both parties admitted this in the pleadings. The court is satisfied that in view of the admission by both parties that there are grounds to relax the *par delictum rule*.

[39] The court may relax the *par delictum rule* in the interests of justice where the turpitude of the transaction does not outweigh the injustice of the resulting situation. It is a question of fact in each instance to determine the turpitude and the injustice that will be caused if the rule is strictly applied. See **Jajbhay supra at 542**.

[40] The plaintiff must prove impoverishment and that the defendant is enriched. In the present case the plaintiff paid an amount of R 4 380 050-00 (although the defendants aver that the amount of R 4 395 000-00 – in plea) was received). It is further trite that the plaintiffs' daughter and a private company linked to the plaintiffs made certain payments towards the defendants. The defendants received these payments without complaining about the payee thereof. The first plaintiff gave evidence why this was done and although somewhat shaky it was not denied that these payments were in terms of the agreement. There is no rule that only payments made by a plaintiff may be considered to determine whether there were enrichment of the defendants and the impoverishment of the plaintiffs.

[41] The defendants gladly accepted these payments and the reasonable inference is that the defendants benefitted from the payments and the improvements made by the plaintiff and it can safely be held that the defendants were enriched by receiving these payments. The defendants cannot benefit from payments or improvements made in terms of an illegal agreement and it would be in the interest of justice for the defendants to repay what was received in terms of the illegal agreement. The defendants cannot hide behind a strict compliance of the *par delictum rule* only because the evidence on behalf of the

plaintiff why these payments were made by third parties was somewhat shaky. The court may relax the rule in the interest of justice as set out in **Jajbhay supra**.

[42] The defendants, via their shareholding in JBE (third defendant) never lost their dominium over the property as shareholders and may claim at most some compensation for occupation by the plaintiffs. The expert witness's evidence did not assist the defendants at all in this regard and at most the defendants are entitled to absolution of the instance on the counterclaim. See **Jajbhay supra at 557**. As indicated supra the court is satisfied that the counterclaim be dismissed. The dictum of **Jajbhay** was followed in **Blacher v Josephson 2023 (3) SA 555 (WCC) par [33] to [36]**.

[43] The agreement being illegal disqualifies the defendants from retaining any non-refundable deposits or any other amount. See [35] supra.

ORDER:

1. Claim 1: The defendant is to repay the amount of R 4 380 050-00 received from the plaintiffs and their nominees during the time while the agreement was operative within 60 days from date of this order.
2. Claim 2: Absolution of the Instance is ordered.
3. Claim 3: The claim was abandoned.
4. Claim 4: The defendants are to return to the plaintiffs the items admitted to be in its possession namely the Land Cruiser; two fire-fighters (one a mobile and the other a bakkie firefighter); three (3) water tanks; three (3) drinking bowls; three (3) feeding bowls; and one Nyala Bull, and if not

possible to deliver the Nyala Bull, the 2018 money equivalent of such bull when summons was issued.

5. The defendants to pay the costs of the plaintiffs on a party-and-party scale inclusive of counsels' fees on scale B.

HOLLAND-MUTER J

Judge of the Pretoria High Court

Appearances:

Plaintiffs: Adv E van Rensburg

Defendants: Adv P Van Der Berg SC

Days in Court: 21/10; 22/10; 23/10; 30/10/2025.

Judgment reserved on 30/10/2025.

Judgment delivered by uploading the judgment onto CaseLines on 02/01/2026