IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: 1750/2024

In the matter between:

VERONICA GOEIEMAN **APPLICANT**

(Identity number: 88[…])

And

MOALUSI ISHMAEL PHOKOJE **FIRST RESPONDENT**

(Identity number: 78[…])

KEHILWE JUNED PHOKOJE **SECOND RESPONDENT**

(Identity number: 84[…])

YABELA MIVUYO ALIPHONSOR DLALI NO **THIRD RESPONDENT**

(in his capacity as trustee of YDT Trust (IT970/2012)

REGISTRAR OF DEEDS, BLOEMFONTEIN **FOURTH RESPONDENT**

CHANGING TIDES 17 (PTY) LTD NO **FIFTH RESPONDENT**

(Registration number: 2001/009766/07)

And

Case no: 3056/2024

MOALUSI ISHMAEL PHOKOJE **FIRST APPLICANT**

(Identity number: 78[…])

KEHILWE JUNED PHOKOJE **SECOND APPLICANT**

(Identity number: 84[…])

And

YDT TRUST **FIRST RESPONDENT**

VERONICA GOEIEMAN **SECOND RESPONDENT**

YABELA MIVUYO ALIPHONSOR DLALI **THIRD RESPONDENT**

(in his capacity as trustees of the YDT Trust)

(Trust Number: IT970/2012)

Neutral citation: *Goeieman v Phokoje and Others; Phokoje and Another v YDT Trust and Others* (1750/52024 and 3056/2024) [2026] ZAFSHC 15 (19 January 2026)

Coram: Daffue J

Heard: 18 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 19 January 2026.

Summary: Transfer of immovable property – deed of sale lapses automatically if suspensive condition is not timeously fulfilled – in terms of *nemo plus iuris* principle no one may transfer more rights than they have – abstract theory of passing of ownership – fraud unravels everything – ownership does not pass if there is a defect in the real agreement, such as no intention by transferor to pass transfer.

ORDER

<u>Application 1750/2024</u>:

1 The deed of sale dated 5 March 2020 between the applicant and the YDT Trust represented by its trustee, the third respondent, in respect of Erf 6[...] Heidedal, (Extension 13), district Bloemfontein (the property), is declared null and void.

2 The registration of transfer of the property to the trustees for the time being of the YDT Trust IT 970/2012 in terms of the Deed of Transfer T2404/2022 dated 25 February 2022 is declared invalid and set aside.

3 The purported deed of sale between the YDT Trust and the first and second respondents dated 16 March 2020 is declared null and void.

4 The subsequent registration of transfer of the property in the names of the first and second respondents in terms of Deed of Transfer T 2405/2022 is declared invalid and set aside.

5 The property shall be re-registered in the name of the applicant.

6 The first and second respondents shall pay the costs of the application, inclusive of the fees of counsel on scale B.

<u>Application 3056/2024</u>:

1 The first and second applicants' application is dismissed with costs, inclusive of the fees of counsel on scale B.

JUDGMENT

Daffue J

Introduction

[1] The Romans taught us that *fraus omnia vitiat*. Put otherwise, fraud cuts through or vitiates everything, or fraud unravels all. One important question to be considered *in*

casu is whether the previous registered owner of immovable property may successfully rely on this *dictum* entitling her to restitution of her property. The actions of an attorney who has been struck from the roll of legal practitioners in the meantime and a trust of which her husband is the sole trustee will be in the spotlight and considered in detail hereunder.

[2] By agreement between the parties, two applications, to wit applications 1750/2024 and 3056/2024, were set down to be heard together. The reasons for the agreement will appear soon.

The parties

[3] The applicant in application 1750/2024 is Veronica Goeieman, who describes herself as an adult female residing at Erf no 6[...], Phase 4, Bloemfontein, Free State Province. It is common cause that she is still residing in the dwelling house on the immovable property which is the subject matter of both applications. The applicant was at all relevant times until 25 February 2022 the registered owner of the following immovable property (herein later referred to as the property), described as follows:

Erf 6[...], Heidedal (Extension 13), district Bloemfontein, Province Free State;

in extent 500 square metres;

held by Deed of Transfer T12553/2011.

The applicant is cited as the second respondent in application 3056/2024.

[4] The first and second respondents in application 1750/2024 are respectively Moalusi Ishmael Phokoje, an adult male person and Kehilwe Juned Phokoje an adult female person, married to each other in community of property. They are the first and second applicants in application 3056/2024 and presently the registered joint owners of the property held by Deed of Transfer T2405/2022 registered on 25 February 2022.

[5] Ms Goeieman and Mr and Mrs Phokoje are the only parties who filed affidavits herein and submitted arguments through their legal representatives. To avoid confusion,

I shall refer to them as Goeieman and the Phokojes but insofar as Mr Phokoje acted on behalf of him and his wife, I shall from time to time refer to him as Mr Phokoje.

[6] Yabela Mivuyo Aliphonsor Dlali NO, in his capacity as trustee of the YDT Trust, IT970/2012, is cited as third respondent in application 1750/2024. The YDT Trust is cited as third respondent in application 3056/2024 and its aforesaid trustee as fifth respondent in that application.

[7] The Registrar of Deeds, Bloemfontein is cited as the fourth respondent in application 1750/2024. The Registrar does not oppose the application. The fifth respondent in application 1750/2024 is Changing Tides 17 (Pty) Ltd NO in its capacity as trustee of the South African Home Loans Guarantee Trust, IT 10713/2000(T) (SA Home Loans). This entity, being the registered bondholder over the property, filed a notice to abide the decision of the court.

The relief sought

[8] Goeieman seeks the following relief in application 1750/2024:

a. that the deed of sale dated 5 March 2020 between herself and Mr Dladli in his capacity as trustee of the YDT Trust IT970/2012 in respect of the property be declared null and void;

b. that Deed of Transfer T2404/2022 dated 25 February 2022 be declared invalid and set aside;

c. that the deed of sale dated 20 March 2020 between the YDT Trust and the first and second respondents be declared null and void;

d. that Deed of Transfer T2405/2022 in favour of the first and second respondents be declared invalid and set aside;

e. that the YDT Trust, being the third respondent be ordered to pay the costs of the application and that the first and second respondents pay the costs of the application only in the event of their opposition.

[9] Although Goeieman also seeks an order that the property be re-registered in her name, this is unnecessary, bearing in mind s 6 of the Deeds Registries Act 47 of 1937 which reads as follows:

‘6. Registered deeds not to be cancelled except upon an order of Court
(1) Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a registrar except upon an order of Court.
(2) Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage bond as provided for in subsection (1), the deed under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.’ (Emphasis added.)

[10] Although the court has the power to cancel a registered mortgage bond, Goeieman did not asked for such order in either the original or amended notice of motion. Bearing in mind s 6(2) above, such order may not be required.

[11] In application 3065/2024 the Phokojes seek restoration of possession of the property. This they ask notwithstanding the fact that they have never been in actual physical possession of the property. Furthermore, they seek an order that the first, second and third respondents, jointly and severally, pay an amount of R200 000 to them. They also seek leave to approach the court on the same papers, duly supplemented, to claim damages once they have inspected the property.

A brief synopsis of the historical facts

[12] Goeieman received ownership of the property in terms of Deed of Transfer T12553/2011. She and her elderly mother have been occupying the property all along and this is still the situation.

[13] On 5 March 2020, Goeieman and the YTD Trust represented by its trustee, referred to as Yabela Dlali, concluded a deed of sale on the letterhead of YDT Real Estate Agents. Attorney Nozipho Dlali of ND Attorneys (also referred to as Nozipho Dlali Attorneys in the papers) was appointed as conveyancer and instructed to attend to the registration of transfer notwithstanding the fact that she was not a qualified conveyancer. Her details were inserted in paragraph 1 of the document in a different handwriting without this being initialled by anyone.

[14] The purchase price was R300 000 and occupation of the property would be given on 31 March 2020. The sale was subject to a suspensive condition, to wit the approval of a loan by a financial institution for not less than R300 000 on/or before 6 June 2020 upon the security of a first mortgage bond to be registered over the property. It is common cause that the suspensive condition has not been complied with. No evidence has been presented of a loan being approved to the purchaser at any stage. Goeieman's title deed was handed over to attorney Nozipho Dlali of ND Attorneys when the transaction was concluded. She – not being a qualified and registered conveyancer – was to effect registration of transfer as agreed in paragraph 9.2 of the deed of sale.

[15] A few days after the deed of sale, Goeieman decided against proceeding therewith and informed the trustee accordingly. She heard nothing further from the trustee and accepted that the sale agreement had been cancelled. By the end of July 2020, Goeieman became aware of enquiries having been made by the YDT Trust about her municipal account. She requested her mother to collect her title deed from Mr Dlali, which he failed to hand over to her. Upon enquiries made by officials from the local municipality during November 2021 she again requested her mother to communicate with Mr Dlali. He insisted then that he would not hand over the title deed and that she would have to sell her house to repay the money she allegedly owed him.

[16] In January 2022 Mr Dali informed a member of the Legal Aid office who was approached by Goeieman at the time for assistance that his wife, Nozipho Dlali, had been quarantined. Goeieman later established that ND Attorneys' doors had been

locked. At some stage she found out that the attorney had been suspended from practice. In March 2022, Goeieman established at the Deeds Registry that her property had been transferred to the YDT Trust. She was under the impression that she had not signed any transfer documents in this regard.

[17] On 26 September 2023, Goeieman was served with an eviction application issued by the Phokojes. It turned out, upon receipt of documents from the Phokojes' lawyers, that the property had been transferred into their names. She also discovered that Mr Phokoje signed an offer to purchase the property from the YDT Trust on 16 March 2020 for an amount of R480 000. This occurred a mere nine days after she had concluded the deed of sale in terms of which she sold the property to the YDT Trust for R300 000. She also established that the property was transferred from herself to the trust and from the trust to the Phokojes on the same day, *ie* 25 February 2022. It is common cause, alternatively not disputed, that the Phokojes never inspected the property, either before the signing of the purported deed of sale, or before registration into their names. At no stage did any prospective purchaser or estate agent seek leave from Goeieman to inspect the property.

[18] It is Goeieman's case that since the property was fraudulently transferred to the YDT Trust, the subsequent transfer to the Phokojes should also be declared invalid and set aside.

[19] The Phokojes made material misrepresentations in their answering affidavit in application 1750/2024 which they repeated in the founding affidavit in application 3056/2024. The deed of sale between Goeieman and the YDT Trust was entered into on 5 March 2020 and not 31 March 2021 as alleged. Therefore, their agreement of 16 March 2022, referred to as an offer only by Mr Phokoje, did not predate the aforesaid deed of sale as alleged. Mr Phokoje recorded under oath that insofar as he merely made an offer on 16 March 2020, they have 'not fulfilled any/or all of the conditions that would lead to a legally binding deed of sale.' Therefore, he stated that 'effectively, no obligations ensued between us and the First respondent [the YDT Trust], equally.' But

his version is in direct conflict with their own title deed which reflects the date of purchase as 16 March 2020.

[20] According to Mr Phokoje, their home loan was only approved on 25 February 2022 and not on 17 June 2020, nearly two years earlier as the objective evidence shows. 25 February 2022 refers to the date of registration of the property into their names together with the simultaneous registration of the mortgage bond. Contrary to the Phokojes' version, SA Home Loans informed them on 17 June 2020 that their loan application in the amount of R445 000 had been approved and that a mortgage bond in the amount of R500 000 was to be registered against the immovable property. This approval did not occur within 60 days from the purported deed of sale dated 16 March 2020, whilst registration of transfer and the mortgage bond took place 18 months later, to wit 25 February 2022 and thus about two years after the purported deed of sale.

[21] It is apparent that YDT's office, apparently with reference to attorney Dlali's office, was contacted to provide the Phokojes with the keys of the house only after the property was registered in their names. The keys could not be provided to them. They were informed by attorney Dlali 'that the previous owners of the property were still residing at the property.' Attorney Dlali arranged for the Phokojes to be accompanied to the property whereupon they discovered that Goeieman and her mother still resided there. Goeieman disputed the hearsay evidence that they agreed to vacate the premises in due course. Clearly, the Phokojes tried to obtain assistance from either the YDT Trust (Mr Dlali) or his wife, attorney Dlali in particular, but they were constantly unavailable. Hearsay allegations that Goeieman would be prepared to rent the property or was even willing to buy back the property are denied by her and such allegations, allegedly coming from the mouth of attorney Dlali, should be rejected as false.

[22] On 23 February 2023, under application number 208/2023, Ms Nozipho Cokisa Dlali was suspended from practice as legal practitioner. On 5 March 2025, under application 6349/2024, she was struck from the roll of legal practitioners.

[23] The Phokojes eventually issued eviction proceedings out of the Magistrate's Court under case 887/2023 which proceedings have been kept on hold pending finalisation of the High Court applications. In the meantime, the Phokojes had to continue paying their bond instalments notwithstanding the fact that they are being prevented from occupying the property registered in their names.

[24] It appears from Goeieman's replying affidavit in application 1750/2024 that attorney Max Theron (Mr Theron) of Matlho Attorneys had received instructions from ND Attorneys to effect the two transfers in this instance. Apparently, this was in terms of a standing agreement between the two firms. It is therefore necessary to quote the two letters dated 11 March 2025, the first by Phatshoane Henney Inc (PH), the attorneys eventually acting for Goeieman and the second addressed by Matlho Attorneys to them. PH's letter reads as follows:

'1. The above-mentioned matter refers.

2. We confirm that we act on behalf of Ms. V. Goeieman (herein after referred to as "our client") with instructions to address this letter to yourself as we hereby do.

3. We have been placed in possession of documentation pertaining to the Transfer of Property / Erf 6[...], Heidedal (Extension 13), district Bloemfontein, Province Free State.

4. From the Deed of Transfer and the Power of Attorney to pass transfer, we note that you acted as the Conveyancer for the alleged transfer of the above-mentioned property from our client to the YDT Trust.

5. We note that the lodging firm of attorneys was Nozipho Dlali Attorneys and do we surmise that you acted on behalf, or under instructions Nozipho Dlali Attorneys in providing the conveyancing services.

6. Considering that our client was an alleged party to this Transfer, we are instructed to request as we hereby do, the following documents pertaining to this Transfer, from yourselves:

6.1 Any addendums that were allegedly concluded between our client and the YDT Trust, which forms party of the OTP alleged entered into by the parties;

6.2 The clearance figures issued by the Municipality and further the COC that was likewise issued for the property;

6.3 The guarantee(s) from an institution which was submitted to you by the purchaser (YDT Trust) in fulfilment of paragraph 3.2 of the alleged OTP;

6.4 Further, any waiver in writing as contained in paragraph 7.1 of the OTP;

6.5 Finally any confirmation of cash deposit received by yourselves pertaining to the purchase price as contained in paragraph 3.1 of the alleged OTP;

6.6 A copy of the Trust Resolution by the purchaser ("YDT Trust"), which gave authority to Mr. Dlali to conclude the alleged OTP with our client;

6.7 The final statements of accounts in this transaction; and

6.8 Copy of the OTP entered into between YDT Trust and Phokoje Family under Transfer No. 2405/2022, with the accompanying addendums, if any.

7. . . .

8. . . .'

[25] Mr Theron responded as follows to PH's letter:

'We refer to the above and to your letter of even date.

We confirm that writer hereof had an arrangement to execute and sign the deeds on behalf of Nozipho Dlali Attorneys only as they did not have qualified conveyancer in their employ.

In turn, Nozipho Dlali attorneys would pay our offices a minimal fee for registration of their deeds.

<u>All documents pertaining to the respective transfer were soley drafted by Nosipho Dlali Attorneys</u> themselves. They prepared the OTP's, applied for and received the guarantees, applied for Clearance figures themselves and kept these records themselves.

All finances relating to payments, including any cash amounts in respect of any purchase price were made to their Trust Account, of which they were to pay the clients in turn.

<u>No documents in respect of the specific transfer were ever furnished to ourselves</u> in respect of these transactions and we therefore are not in the position to provide your offices with the same.

<u>We were merely instructed to "prep" their deeds for correctness, sign the same and execute the deeds</u> on their behalf at a minimal fee.

We presume that any of the file contents which you seek would possibly be with the Legal Practice Council, as we presume that the Legal Practice Council would probably have taken charge of their files.

Yours faithfully' (Emphasis added.)

[26] A copy of the Deeds Registry examiner's notes dated 24 February 2022, the day before registration of transfer, has been obtained. Two queries were raised, stipulating what needed to be done before registration could be effected. I quote:

'2. Amend registration numbers of transferee on the PA [power of attorney] with initialling and certify on a separate page in respect of same error on the TDR;
3. Date of signing on the deed, differs with PA date, do the necessary with initial.'

[27] Mr Theron provided his conveyancer's certificate in respect of the transfer duty/exception certificate as requested by the examiner. The power of attorney to pass transfer (PA) forms part of the documents before the court. Clearly, the registration number of the YDT Trust had to be amended as well as the date of the deed of sale. Goeieman, as the transferor, was supposed to initial at the two amendments. For that to be achieved, the document would have to be withdrawn from the Deeds Registry and presented to ND Attorneys for Goeieman to initial. It is not Mr Theron's case that he withdrew the power of attorney to pass transfer and sent it to Dlali Attorneys to be initialled by Goeieman. More importantly, Goeieman denies that she has initialled the document in accordance with the examiner's note of 24 February 2022. She accepts that the power of attorney to pass transfer and other documents were signed earlier and apparently in March 2020. There is no reason to doubt the veracity of Goeieman's version in this regard.

Legal Principles

[28] Where an agreement contains a suspensive condition that is not timeously fulfilled, the agreement lapses automatically. This is trite, as yet again confirmed in *Fairoaks Investment Holdings (Pty) Ltd. and Another v Oliver and Others*[1] (*Fairoaks*). Any subsequent attempt to revive or implement a lapsed agreement must comply with the formal requirements of the Alienation of Land Act 68 of 1981.[2]

[29] The *nemo plus iuris ad alium transferre potest quam ipse haberet* principle (the *nemo plus iuris* principle) is still part of our law. The Supreme Court of Appeal stated the following in *Oriental Products (Pty) Ltd v Pegma 178 Investments Trading CC and Others*[3] (*Oriental Products*):

'The case of the appellant was that it remained owner of the property because it had been transferred to the second respondent by <u>Mr Qu who had no authority to transfer it; and that the transfer to the first respondent was likewise void because the second respondent was not the true owner and could, accordingly, not have effected transfer. Both transfers were consequently void for the same reason. The old adage, nemo plus iuris ad alium transferre potest quam ipse haberet,</u> as formulated by Ulpian (Digest 50.17.54), <u>applies: no one can transfer more rights to another than he himself has</u> (using Hiemstra and Gonin's translation for safety's sake). Applied to this case it means that Qu had no rights to ownership and, in the absence of the owner's authority, he could not have transferred ownership to the first purchaser. And because the first purchaser did not become owner it, in turn, was unable to transfer ownership to the second purchaser. All this, in my respectful view, has nothing to do with the abstract system of transfer which, in any event, is a well established principle of our law. Because counsel argued the case before the court below with reference to the abstract system that it, incorrectly, found that the second transfer was valid – something no one argued before us.' (Emphasis added.)

[1] *Fairoaks Investment Holdings (Pty) Ltd. and Another v Oliver and Others* [2008] ZASCA 41; [2008] 3 All SA 365 (SCA); 2008 (4) SA 302 (SCA).
[2] *Ibid* para 20.
[3] *Oriental Products (Pty) Ltd v Pegma 178 Investments Trading CC and Others* [2010] ZASCA 166; 2011 (2) SA 508 (SCA); [2011] 3 All SA 173 (SCA) para 26.

[30] It is trite, as mentioned in *Legator McKenna INC and Another v Shea and Others*[4] (*Legator McKenna*) that the requirements for the passing of ownership in terms of the abstract theory are two-fold, namely registration of transfer in the Deeds Registry in the case of immovable property, coupled with a so-called real agreement. The essential elements of the real agreement are the intention on the part of the transferor to transfer ownership and the intention of the transferee to become the owner of the property. Although the abstract theory does not require a valid underlying contract such as a sale, ownership does not pass despite registration of transfer if there is a defect in the real agreement. Notwithstanding the abstract theory referred to above, if the underlying transaction is tainted by fraud, ownership does not pass as has been set out clearly in *Quartermark Investments (Pty) Ltd v Mkhwanazi and Another*[5] (*Quartermark*). Fraud unravels property transactions even where innocent third parties are involved.

[31] Where registration is effected pursuant to fraud or a forged document, ownership of the property does not pass notwithstanding the formal registration process as reiterated in *Nedbank Ltd v Mendelow NO and Another* (*Mendelow*)[6]. I quote:

'It is trite that where registration of a transfer of immovable property is effected pursuant to fraud or a forged document ownership of the property does not pass to the person in whose name the property is registered after the purported transfer. Our system of deeds registration is negative: it does not guarantee the title that appears in the deeds register. Registration is 'intended to protect the real rights of those persons in whose names such rights are registered in the Deeds Office'. And it is a source of information about those rights. But registration does not guarantee title, and <u>if it is effected as a result of a forged power of attorney or of fraud, then the right apparently created is no right at all.</u>'[7] (Emphasis added.)

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[4] *Legator McKenna Inc and Another v Shea and Others* [2008] ZASCA 144; 2010 (1) SA 35 (SCA); [2009] 2 All SA 45 (SCA) paras 21 and 22.
[5] *Quartermark Investments (Pty) Ltd v Mkhwanazi and Another* [2013] ZASCA 150; [2014] 1 All SA 22 (SCA); 2014 (3) SA 96 (SCA) paras 21-25; *Moseia and Others v Master of the High Court: Pretoria and Others* [2021] ZAGPPHC 37 paras 48-58; *Botha NO v Leboko-Radebe and Others* [2022] ZAGPJHC 724 paras 11-15; and *Knox v Mofokeng and Others* [2012] ZAGPJHC 23; 2013 (4) SA 46 (GSJ) paras 15 and 19.
[6] *Nedbank Ltd v Mendelow NO and Another* [2013] ZASCA 98; 2013 (6) SA 130 (SCA).
[7] *Ibid* para 12.

[32] In *Absa Bank Limited v Moore and Another*[8] (*Moore*), the Constitutional Court considered the consequences of a scam and the orders of the courts *a quo*, firstly, the High Court and secondly, the Supreme Court of Appeal. On appeal to it, Absa unsuccessfully sought an order that the five original mortgage bonds which it held over the Moores' property (Moores being the debtors), be reinstated over the property notwithstanding the fact that these mortgage bonds had been cancelled once the Moores' debt had been settled as part of the illegal transactions of which the Moores were totally unaware off. Cameron J, writing for a unanimous court, asked the following question:

'So does "fraud unravel all" here? Can the maxim help the Bank by undoing the debt discharge and the bond cancellation?'[9]

The learned justice continues as follows:

'And Brusson cannot avoid being bound by relying on its own fraud to invalidate the loan agreement. Still less can a third party – the Bank – disregard the loan agreement because of Brusson's fraud. The maxim is not a flame-thrower, withering all within reach. <u>Fraud unravels all directly within its compass, but only between victim and perpetrator, at the instance of the victim. Whether fraud unravels a contract depends on its victim, not the fraudster or third parties.</u>

Does the Brusson fraud unravel the cancellation of the Moores' bonds? The answer, equally, must be No. The bonds were accessory to the main debt they owed to the Bank. The main obligation was validly cancelled. It follows with logical inevitability that the accessory obligation was discharged too.'[10] (Emphasis added.)

[33] In *Esorfranki Pipelines (Pty) Ltd and Another v Mopani District Municipality and Others*[11] the Supreme Court of Appeal stated the following in response to a joint venture

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[8] *Absa Bank Limited v Moore and Another* [2016] ZACC 34; 2017 (1) SA 255 (CC); 2017 (2) BCLR 131 (CC).
[9] *Ibid* para 38.
[10] *Ibid* paras 39-40.
[11] *Esorfranki Pipelines (Pty) Ltd and Another v Mopani District Municipality and Others* [2014] ZASCA 21; [2014] 2 All SA 493 (SCA).

who dishonestly obtained a tender that it may suffer prejudice because of setting aside the tender:

'Fraud is conduct which vitiates every transaction known to the law. [It continued, quoting Lord Denning.][12]

"No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever; . . ."'.[13]

[34] In *Namasthethu Electrical (Pty) Ltd v City of Cape Town and Another*[14] the Supreme Court of Appeal also dealt with the aforesaid maxim. It held that the City of Cape Town could not be compelled to submit to an arbitration process in accordance with the dispute resolution clause in the contract which it had validly cancelled after establishing the fraudulent and corrupt conduct of the appellant.

Evaluation of the evidence and submissions by the parties

[35] It is important to note that neither Mr Dlali in his capacity as trustee of the YDT Trust, nor his wife who apparently acted as the attorney *in casu* presented any evidence in support of the legality of the original deed of sale and/or compliance with the suspensive condition and/or the legality of the subsequent transfer to the YDT Trust and thereafter the transfer to the Phokojes.

[36] The Phokojes raised a point *in limine* to the effect that Goeieman failed to cite the YDT Trust. There is no merit in the point taken. The Supreme Court of Appeal reiterated in *Land and Agricultural Development Bank of SA v Parker and Others*[15] that the proper person to act in legal proceedings on behalf of a trust is the trustee. Yabela Mivuyo Aliphonsor Dlali in his capacity as trustee of the YDT Trust IT970/2012 was properly cited as third respondent in application 1750/2024.

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[12] *Lazarus Estates Ltd v Beasley* [1956] 1 QB (CA) at 712.
[13] Footnote 11 para 25.
[14] *Namasthethu Electrical (Pty) Ltd v City of Cape Town and Another* [2020] ZASCA 74 paras 28 and 38.
[15] *Land and Agricultural Development Bank of SA v Parker and Others* [2004] ZASCA 56; [2004] 4 All SA 261 (SCA); 2005 (2) SA 77 (SCA) para 10.

[37] It is necessary to point out that Goeieman could not validly cancel the deed of sale concluded with the YDT Trust verbally. Her defence in this regard does not hold any water. However, it is trite that once the suspensive condition was not fulfilled, as is the case based on the undisputed evidence mentioned above, the deed of sale terminated automatically as confirmed in *Fairoaks*.[16]

[38] Although the alleged oral cancellation by Goeieman of her agreement with the YDT Trust may not in itself have any legal consequences, it is apparent that the trustee, Mr Dlali and his wife, the former attorney and owner of ND Attorneys, accepted the oral cancellation. Goeieman's version is corroborated by the statement for wasted costs issued by ND Attorneys to her on 16 October 2020 in the amount of R152 540.92, attached as annexure VG6 to the replying affidavit in application 1750/2024. Notwithstanding this, they secretly proceeded to arrange registration of transfer although two years after conclusion of the deed of sale.

[39] The purported deed of sale between the YDT Trust and the Phokojes needs to be considered. An incomplete document was placed before the court. Pages 3, 7 and 9 thereof are missing. The Phokojes correctly conceded that this document was not signed by anyone on behalf of the seller as is apparent from page 8 thereof to indicate acceptance of the offer. Someone purportedly signed as seller on page 10 to acknowledge a commitment to pay the estate agent's fees. No provision is made for a date of occupation of the property. The document does not contain a clause to indicate that the property was inspected by the purchasers. This purported deed of sale was subject to a suspensive condition contained in clause 3 thereof that the purchasers be able to raise a loan from a financial institution upon security of a mortgage bond to be registered against the property within 60 days from date of acceptance of the offer in the amount of R480 000. It is common cause that no such loan was granted within 60 days and further, that no mortgage bond was registered within the period of 60 days from 16 March 2020 as clearly stipulated in clause 3. There is no indication that the YDT Trust

[16] Footnote 1 para 20.

and the Phokojes agreed in writing to amend the purported deed of sale in this regard and/or that the YDT Trust in whose favour the suspensive condition was included, forfeited its right in this regard prior to the lapse of 60 days. Consequently, the purported deed of sale automatically terminated thereafter based on the trite principle confirmed in *Fairoaks*.[17]

[40] The YDT Trust confirmed on page 6 of the document that no person was in unlawful occupation of the property in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. Furthermore, that the property was not occupied by anyone and therefore, the purchasers would receive undisturbed possession and occupation thereof. These were fraudulent misrepresentations. If the Phokojes inspected the property at any stage prior to the signing of the deed of sale or thereafter or even before registration of transfer into their names, they would have recognised that Goeieman and her mother occupied the property and that Goeieman regarded the property as hers.

[41] Although the property was registered in the name of the YDT Trust on 25 February 2022 and on the same day transferred to the Phokojes, Goeieman has not received a single cent of the purchase price. The only reasonable inference to be made from the facts before the court is that the Dlalis, Mr Dlali in his capacity as trustee of the YDT Trust, and/or his wife, the former attorney Nozipho Dlali, or both of them, received the nett proceeds of the sale to the Phokojes, less perhaps the estate agent's commission and outstanding municipal rates and taxes. There can be no doubt that the Dlalis acted in cahoots to defraud not only Goeieman but also the Phokojes. This *modus operandi* has been followed in at least one other transaction which led to Ms Dlali being struck from the roll by Opperman J and Ntanga AJ in case number 6349/2024.[18]

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[17] *Ibid.*
[18] *The South African Legal Practice Council v NC Dlali* (6349/2024), an unreported judgment, the order having been granted on 6 March 2025 and the written reasons provided on 10 March 2025 paras 1 and 7.

[42] This is indeed a case of *fraus omnia vitiat*. The Dlalis' fraud unravels all. Although the Constitutional Court warned in *Moore*[19] that the maxim is not 'a flame-thrower, withering all within reach', I am satisfied that Goeieman as the victim of the Dlalis' fraud is entitled to the relief claimed. Once the deed of sale is declared null and void and the consequent transfer to the YDT Trust is declared invalid and set aside, the further deed of sale and transfer of the property to the Phokojes shall follow suit.[20]

[43] It is apparent from Mr Theron's version that he as conveyancer merely signed the power of attorney to pass transfer and other related documents that required his signature as conveyancer. He was not involved with the finances, for example, to obtain proof that the purchase price payable to the transferor was fully secured to be paid out against registration of transfer. He was not provided with any documents such as the deed of sale, the identity document of the transferor (Goeieman) or the Deed of Trust of the transferee (the YDT Trust). He therefore had to rely on the bona fides of attorney Dlali. He could not even be certain that the power of attorney was signed by Goeieman although this is not an issue *in casu*. However, this document was amended in respect of two vital aspects and required the transferor and her witnesses' initials which were not obtained. I am satisfied that there was a material defect in the real agreement and that ownership did not pass to the YDT Trust notwithstanding registration of transfer. Goeieman did not have any intention to relinquish her ownership of the property. Her version is not contested and there is no reason to reject it as far-fetched. No doubt, if she was requested to initial the power of attorney to pass transfer on 24 February 2022, well-informed as to what was to happen, she would not have initialled it.

[44] On his version, Mr Theron never had any interaction with Goeieman. Bearing in mind the accepted facts and the *Legator Mckenna* principle, no valid real agreement was concluded. As mentioned, Goeieman had no intention to transfer her property to the YDT Trust. This constitutes a defect in the real agreement. This conclusion is inevitable in view of the following:

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[19] Footnote 8 para 39.
[20] *Oriental Products (Pty) Ltd v Pegma 178 Investments Trading CC and Others* (2011) (2) SA 508 (SCA); [2011] 3 All SA 173 (SCA) [2010] ZASCA 166 para 26.

(a) the deed of sale between Goeieman and the YDT Trust automatically lapsed;

(b) Goeieman demonstrated no genuine intention to transfer with reference to her oral cancellation;

(c) Mr Dlali's insistence that she was liable for wasted costs insofar as she did not want to proceed with the transaction;

(d) no proper authorisation to pass transfer was given to Mr Theron as conveyancer, bearing mind the changes to the document which was never authorised by Goeieman;

(e) Nozipho Dlali, the attorney purportedly nominated to act as conveyancer (without her being a conceyancer) is not only married to Mr Dlali, the trustee of the purchasing YDT Trust, which created an undisclosed conflict of interest, but she was eventually suspended from practice without accounting to Goeieman;

(f) the back-to-back transfers on the same day, to wit 25 February 2022, nearly two years after the initial transactions in March 2020, read in context with the factual material presented to the court, are indicative of a coordinated fraudulent scheme by the two Dlalis, rather than legitimate independent transactions; and

(g) the YDT Trust could not and never validly acquired ownership of the property and therefor did not have any title to transfer it to the Phokojes.

[45] I conclude. The agreement between Goeieman and the YDT Trust lapsed and was never revived. The Dlalis accepted the verbal cancellation and issued a statement to Goeieman in respect of the wasted costs but nevertheless proceeded with registration of transfer. Ownership did not validly pass to the YDT Trust who could not validly transfer ownership of the property to the Phokojes. The *nemo plus iuris* principle discussed in *Oriental Products*[21] prevented that. Furthermore, the Dlalis' fraud vitiates everything. Goeieman is entitled to the relief claimed in application 1750/2024.

[46] Goeieman seeks an order that her title deed, Deed of Transfer T12553/2011 be revived and the property be re-registered in her name. In my view, such order is not required bearing in mind the provisions of s 6(2) of the Deeds Registries Act 47 of 1937

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[21] Footnote 3 para 26.

quoted above. The subsection makes it clear that 'the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed'. However, to avoid any confusion, I shall grant such relief.

[47] The Phokojes' application 3056/2024 shall be dismissed. It presupposes the validity of the transfers. I have dealt with this in detail above. Without valid ownership they have no *locus standi* to claim possession of the property or to seek damages from Goeieman. In any event, damages cannot be claimed in application procedure. They are not remediless and may still claim damages from the Dlalis.

Costs

[48] Although I have some sympathy for the situation in which the Phokojes find themselves, they should never have opposed the application and, to make things worse, launched a separate application. They made material misrepresentations regarding their loan application, the approval thereof and the legal nature of the purported agreement concluded between them and the YDT Trust on 16 March 2020. There is also no reasonable and acceptable explanation why they could not ensure that the property be transferred into their names soon after their home loan was approved in June 2020. They failed to explain the delay of 20 months. No doubt, they purchased the property without even inspecting it. There is no indication when occupation would have been provided to them. They were apparently defrauded by the Dlalis, bearing in mind the contents of the purported deed of sale as mentioned above, but they just did not care whether the property was occupied and if so, on what basis and by whom. The failure to inspect the property at any stage before 16 March 2020, or even before registration of transfer, and to verify that the YDT Trust was legally entitled to obtain transfer and the further failure to investigate why the property remained occupied over a period of about two years is sufficient reason to grant costs against them in application 1750/2024, inclusive of the fees of counsel on scale B.

[49] Insofar as the Phokojes' application 3056/2024 stands to be dismissed, there is no reason why the costs should follow the result. A similar order shall be made as in application 1750/2024 pertaining to counsel's fees.

Order

[50] The following orders are made:

Application 1750/2024:

1 The deed of sale dated 5 March 2020 between the applicant and the YDT Trust represented by its trustee, the third respondent, in respect of Erf 6[...] Heidedal, (Extension 13), district Bloemfontein (the property), is declared null and void.

2 The registration of transfer of the property to the trustees for the time being of the YDT Trust IT 970/2012 in terms of the Deed of Transfer T2404/2022 dated 25 February 2022 is declared invalid and set aside.

3 The purported deed of sale between the YDT Trust and the first and second respondents dated 16 March 2020 is declared null and void.

4 The subsequent registration of transfer of the property in the names of the first and second respondents in terms of Deed of Transfer T 2405/2022 is declared invalid and set aside.

5 The property shall be re-registered in the name of the applicant.

6 The first and second respondents shall pay the costs of the application, inclusive of the fees of counsel on scale B.

Application 3056/2024:

1 The first and second applicants' application is dismissed with costs, inclusive of the fees of counsel on scale B.

J P DAFFUE
JUDGE OF THE HIGH COURT

Appearances

For the applicant in application 1750/2024; and for the second respondent in application 3056/2024:	LBJ Moeng
Instructed by:	Phatshoane Henney Attorneys, Bloemfontein.
For the first and second respondents in application 1750/2024; and the first and second applicants in application 3056/2024:	Z Nyezi
Instructed by:	Mhlokonya Attorneys, Bloemfontein.