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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 061982/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
30 January 2026

In the matter between:

IVY NTSEPENG NKOMAZANA

Applicant

and

SHISA SANGWENI HOLDINGS PROPRIETARY LIMITED

First Respondent

HLENGWEYINKOSI DUBE

Second Respondent

BIANCA GUGU GUMEDE

Third Respondent

THE REGISTRAR OF DEEDS: PRETORIA

Fourth Respondent

THE LEGAL PRACTICE COUNCIL (LPC)

Fifth Respondent

JUDGMENT

WANLESS J

Introduction

[1] In this application, one Ivy Ntsepeng Nkomazana, an adult female, is the Applicant. Shisa Sangweni Holdings (PTY) Limited is

the First Respondent; Hlengweyinkosi Dube is the Second Respondent; Bianca Gugu Gumede is the Third Respondent; the Registrar of Deeds (Pretoria) is the Fourth Respondent and the Legal Practice Counsel is the Fifth Respondent.

[2] It was always the intention of this Court to deliver a written judgment in this matter. In light of, *inter alia*, the onerous workload under which this Court has been placed and the lack of administrative assistance, this has simply not been possible without incurring further delays in the handing down thereof. In the premises, judgment is being delivered *ex tempore*. Once transcribed, it will be “*converted*”, or more correctly “*transformed*”, into a written judgment and provided to the parties. In this manner, neither the quality of the judgment nor the time in which the judgment is delivered, will be compromised. For the purposes of the time limits as prescribed in terms of the provisions of subrule (49)(1)(b), the date shall be the date upon which the written judgment is uploaded onto Caselines. This Court is indebted to the transcription services of this Division who generally provide transcripts of judgments emanating from this Court within a short period of time following the delivery thereof on an *ex tempore* basis.

[3] The relief sought by the Applicant (*as set out, verbatim, in the Applicant’s Notice of Motion*) reads as follows:

[1] “*Cancelling the deed of sale entered into between the*

Applicant and the First Respondent regarding the sale of immovable property fully described as Holding 169, Lindequesdrif Agricultural Holdings, Extension 1, province of the capital North-West (the immovable property) held under Deed of transfer number T000069265/2023.

[2] Directing the Fourth Respondent to cancel or reverse the transfer and registration of the immovable property from the name of the First Respondent back to the name of the Applicant.

[3] Directing the First to the Third Respondents to pay costs of this application on an attorney and client scale.”

[4] The said relief is opposed by the First Respondent and the Second Respondent only.

The facts

[5] The facts in this matter, which are either common cause or which cannot be seriously disputed by any of the parties, are as set out hereunder.

[6] On or about the 29th of August 2023 at or near Johannesburg, Gauteng, the Applicant, acting in person and the First Respondent, represented by the Second Respondent, duly authorised thereto, entered into a written agreement of purchase and sale (*“the agreement”*).

[7] In terms of the agreement the Applicant sold to the First Respondent a plot of land measuring approximately two hectares (*“the property”*) and situated in the North-West Province. The purchase price to be paid by the First Respondent to the Applicant in respect of the property was R 300 000.00. This was payable by the payment of a deposit of R 150 000.00 on signature of the agreement *“to the trust account of the Conveyancing Attorney”* with the balance of the purchase price, namely R150 000,00, being payable *“on the date that the conveyancing attorney confirms that the transfer documents have been lodged at the Pretoria Deeds Office.”*

[8] The agreement further provided that *“The full purchase price shall be paid by the conveyancing attorney to the Seller” (“the Applicant”) within 48 (forty - eight) hours of the registration of the property into the name of the Purchaser (the First Respondent) at the Deeds Office.”* Importantly, the agreement also states (*verbatim*) that *“Transfer of the Property shall be affected by the following Conveyancing Attorneys NDLOVU GUMEDE ATTORNEYS (tel: 0[...]/ 0[...]) (email: b[...]) situated at 2[...] P[...] Street, N[...], Randburg, were appointed specifically by the Purchaser.”*

[9] As set out in this judgment¹ the Third Respondent in the present matter is one Bianca Gugu Gumede. In the Applicant’s Founding Affidavit and admitted by the First and Second Respondents in their Answering Affidavit, the Third Respondent is

¹ Paragraph [1] *ibid.*

more fully described as “*Bianca Gugu Gumede, an adult female person of full legal capacity, a conveyancer and director of a law firm, Ndlovu Gumede Attorneys with principal place of business at 2[...] H[...] Street, N[...], EXT 15, Randburg, Gauteng Province.*” In the premises, it is clear from the foregoing that the incorrect party may well have been cited as the Third Respondent in the application. However, in light of the fact that, *inter alia*, there is no opposition in the present matter by either Ndlovu Gumede Attorneys or Bianca Gugu Gumede and that the citation of the Third Respondent was never an issue on the application papers or when the matter was argued before this Court, it can be accepted that this “*issue*”, if indeed it is one, does not require any further attention by this Court.

[10] On or about the 30th of September 2023 the purchase price was fully paid by the First Respondent to the Third Respondent (*by making payment into the Third Respondent’s business account*) and on or about the 9th of November 2023 the property was transferred and registered in the name of the First Respondent. Pursuant thereto, the Third Respondent has failed to pay the purchase price to the Applicant.

[11] As a result of the Third Respondent's failure to make payment to the Applicant as aforesaid the Applicant, on or about the 3rd of April 2024, instituted an application in this Court, under case number 35178/2024, in terms of which the Applicant claims from the

Third Respondent, *inter alia*, payment of the net proceeds of the sale. Thereafter, on or about the 5th of June 2024, the Applicant instituted the present application.

Issues

[12] The principal issues which this Court is called upon to determine are (a) whether the citation of the Second Respondent constitutes a misjoinder and (b) whether the Applicant is entitled to cancel the agreement.

Alleged misjoinder of the Second Respondent

The First and Second Respondent's submissions

[13] The Second Respondent has been improperly joined in this application. It is common cause that the Second Respondent acted in his capacity as a director of the First Respondent during the sale transaction. A private company is a separate legal entity from its shareholders and directors, capable of entering into contracts, suing and being sued in its own name.

[14] Subsection 19(2) of the Companies Act provides that²

“A person is not, solely by reason of being an incorporator, shareholder or director of a company, liable for any liabilities or obligations of the company, except to the extent that the Act or the company’s Memorandum of Incorporation provides

² Act 71/2008.

otherwise.”

[15] The Applicant has not alleged or proved that the Second Respondent breached the sale agreement to which he was not a party; breached his fiduciary duty as a director or acted in a manner justifying the piercing of the corporate veil.

[16] The inclusion of the Second Respondent contravenes subsection 19(2) of the Companies Act and the principle of separate legal personality, constituting a misjoinder. It was submitted on behalf of the First and Second Respondents that the Applicant's claim against the Second Respondent should be dismissed with costs on an attorney and client scale.

The Applicant's submissions

[17] In broad summary, it was submitted (*correctly in the opinion of this Court*) that in order to determine whether there exists a misjoinder or not, the general principle in our law requires that it be determined whether the Second Respondent has a direct and substantial interest in the subject-matter of the litigation, which may be prejudicially affected by the judgment of the Court.³

[18] It was further submitted that the Second Respondent is the sole director of the First Respondent, its agent and “*controlling mind*”. In all the dealings between the First Respondent and the Applicant the Second Respondent has been the sole decision maker

³ *Snyders v De Jager 2017 JDR 0051 (CC at paragraph) [9]*.

and is responsible for signing the agreement as well as the transfer documents in order to give effect to the transfer of the property into the First Respondent's name. In the premises, it was submitted that, by virtue of the composition of the First Respondent, the Second Respondent has an interest in the subject-matter of the litigation.

[19] Arising from the foregoing, it was submitted, on behalf of the Applicant, that there had been no misjoinder.

Discussion and finding

[20] In the first instance, it is imperative to note that the only relief sought by the Applicant against the Second Respondent is in respect of costs. Rather than oppose the application on the basis that he should not be liable for costs the Second Respondent has elected to oppose the application in its entirety. In doing so, he has raised the issue of misjoinder.

[21] Putting aside whether or not, in the event of, *inter alia*, this Court finding that the Applicant should be granted the relief sought and this Court, in the exercise of its discretion, granting a costs order against the Second Respondent, it must be accepted that, on the facts which are common cause in this matter, the Second Respondent does indeed have a direct and substantial interest in the outcome of the present matter. In the premises, this Court finds that there has been no misjoinder in respect of the Second Respondent in the application.

Whether the Applicant is entitled to cancel the agreement

The Applicant's case

[22] The basis upon which the Applicant relies for being entitled to cancel the agreement is that the agreement has been breached in two (2) material respects, namely:

22.1. the failure of the First Respondent to effect payment of the purchase price into the trust account of the Third Respondent; and

22.2. the failure of the Third Respondent to make payment of the purchase price to the Applicant.

The case for the First and Second Respondents

[23] The First and Second Respondents submit that the Applicant has failed to show that she is entitled to the relief sought in that:

23.1 the Applicant has not met the requirements for cancellation in terms of section 6 of the Deeds Registries Act, 47 of 1937 (*"the Act"*);

22.2 the Third Respondent's failure to pay the net proceeds of the sale to the Applicant does not affect the validity of the transfer of the property, which requires (a) delivery by registration of transfer in the Deeds Office and (b) a valid real agreement.

The law

[24] In the first instance the Applicant relied upon the matter of *Minister of Agriculture and Land Affairs and Another v De Klerk and Others*⁴ where it was held:

*“Whether the conveyancer was the agent of the seller for receiving payment of the purchase price from the purchaser in this instance depends solely on the terms of the deed of sale. The conveyancer received and held the money paid over to him in terms of the sale, although not as a party to the deed of sale. No other tacit or express authorization is relied upon.”*⁵

[25] Reliance was also placed by the Applicant upon the dicta of *Botha JA in the matter of Baker v Probert* ⁶ where the learned Judge⁷ stated the following:

“I have difficulty in visualizing a situation (save possibly for an exceptional case) in which there could be due performance of the obligation to pay the purchase price, by paying it to a third party, unless that third party was appointed and authorized by the seller to accept the payment, thus constituting him his agent for the purpose.”

[26] Counsel for the Applicant pointed out that in the matter of *De*

⁴ At paragraph [16].

⁵ 1985 (2) SA 429 (AD).

⁶ 2023 JDR 4385 (GJ).

⁷ At 440A-C.

*Jongh v Philippides and Others*⁸ this Court held⁹ that:

*“It is fairly trite and a long established legal principle that a principal is liable for the dishonest acts of his agent, even where the agent commits a fraud upon the principal.”*¹⁰

[27] In support of their opposition to the relief sought by the Applicant in this matter the First and Second Respondents relied upon the decision in *Nedbank Ltd v Mendelow NO and Another*¹¹, where it was held¹² that:

*“...where there is no real intention to transfer ownership on the part of the owner of the property, then a purported registration of transfer (and likewise the registration of any other real right such as a mortgage bond) has no effect.”*¹³

[28] Also, the First and Second Respondents relied upon the principle as set out by the Supreme Court of Appeal (“the SCA”) in the matter of *Legator McKenna v Shea*¹⁴ that:

“...if there is any defect in what he termed the “one real agreement” - that is, the intention on the part of the transferor and the transferee to transfer and to acquire ownership of a

⁸ 2023 JDR 4385 (GJ).

⁹ At paragraph [15].

¹⁰ Whilst the order of this Court was set aside by the Full Court of this Division, this principle was not disturbed by the judgment of the Full Court.

¹¹ 2013 (6) SA 130 (SCA).

¹² At paragraph [13].

¹³ See *Botha NO v Lebako-Radebe and Others* (16835/2021) [2022] ZAGPJHC 22 September 2022.

¹⁴ 2010 (1) SA 35 (SCA) at paragraphs [21] [22].

thing respectively - then ownership will not pass despite registration. Thus while a valid underlying agreement to pass ownership, such as a sale or donation, is not required, there must nonetheless, be a genuine intention to transfer ownership.”¹⁵

Discussion

Can the Applicant cancel the agreement on the basis that the First Respondent did not make payment of the purchase price into the Third Respondent's trust account but paid that purchase price into the Third Respondent's business account?

[29] It is common cause in this matter that payment by the First Respondent of the purchase price was paid by a payment of the deposit of R 150 000.00 and the balance of the purchase price (*also R150 000.00*) into the business account of the Third Respondent.

[30] Subclause 2.2.1 of the agreement, which deals with the payment of the deposit, specifies that this payment should be made to the trust account of the Conveyancing Attorney. However, subclause 2.2.2 of the agreement, which deals with the payment of the balance of the purchase price, simply states that the further sum of R 150 000.00 “*...is payable by the Purchaser (First Respondent) on the date that the conveyancing attorney (Third Respondent)*

¹⁵ See also *Radebe and Another v Sheriff for the District of Vereeniging and Others* (31495/13) [2014] ZAGPHHC 228 25 September 2014 at paragraph [20].

confirms that the transfer documents have been lodged at the Pretoria Deeds Office.” Significantly, subclause 2.2.2 makes no provision whatsoever as to whom the amount in question is to be paid and, if payment is to be made to the attorney carrying out the transfer of the property, into which type of account controlled by that attorney.

[31] Even if this Court should accept (*in favour of the Applicant*) that upon a proper interpretation of the agreement the First Respondent was obliged to make payment to the Third Respondent and into the Third Respondent's trust account, it is difficult to accept that the First Respondent's failure to comply strictly therewith constitutes a material breach of the agreement entitling the Applicant to cancel same.

[32] This is because, *inter alia*, it is common cause on the application papers before this Court that payment was made to the Third Respondent (*who confirmed same*). Moreover, as pointed out in the First and Second Respondents' Answering Affidavit, if payment into the business account was indeed a material breach of the agreement the Applicant failed to provide the First Respondent with a written notice to remedy the breach in terms of the agreement (*subclause 6.1 thereof*) when the Applicants became aware thereof during or about October 2023.

[33] In addition to the foregoing, the Second Respondent, on behalf of the First Respondent, made the payments into a bank

account the details of which were provided by the Third Respondent. In doing so, the Second Respondent acted on the representations of the Third Respondent, which he was entitled to do. Indeed, the Applicant never disputed same.

[34] In the premises, this Court finds that the payment of the purchase price by the First Respondent into the business account of the Third Respondent is not a material breach of the agreement entitling the Applicant to cancel the agreement.

The defence of the First and Second Respondents that the failure of the Third Respondent to pay the net proceeds of the sale to the Applicant does not affect the validity of the transfer of the property.

[35] As set out earlier in this judgment¹⁶ the First and Second Respondents contend that, *inter alia*, the transfer of the property from the Applicant to the First Respondent is valid. This is because (*so the argument goes*) there was delivery by registration of transfer in the Deeds Office and there was a valid real agreement with the intention to transfer ownership of the property.

[36] Whilst this Court fully accepts the said principles of law, as supported by the authorities as set out earlier in this judgment, this Court must reject that those principles, applied to the facts of the present matter, afford the First and Second Respondents a valid defence to the relief as sought by the Applicant.

¹⁶ Paragraph [23] *ibid*.

[37] The reasons therefor are, *inter alia*, that the intention to transfer on the basis of a valid real agreement can only exist where that agreement remains in force. In the event of that agreement being breached, giving rise to the cancellation thereof, a party to the agreement cannot rely on a valid real agreement with the intention to transfer ownership of the property to support a valid transfer of the property. Neither the First or Second Respondent presented any argument before this Court or presented any authority in support of such an argument, which would gainsay the said reasoning as applied by this Court.

[38] In the premises, this Court finds that the principles relied upon by both Respondents and as enunciated by the authorities referred to herein do not, on their own, constitute a defence to the relief sought by the Applicant. Of course, this is wholly dependent upon the Applicant proving a material breach of the agreement by the First Respondent entitling the Applicant to cancel the agreement.

Is the Applicant entitled to cancel the agreement on the ground of a material breach thereof, arising from the failure of the Third Respondent to pay to the Applicant the purchase price?

[39] This ground relied upon by the Applicant is, in the opinion of this Court, the crux of the present matter. In passing, a decision in respect thereof would appear to encompass the ground of opposition raised by the First and Second Respondents that the

Applicant has failed to satisfy the requirements for cancellation in terms of section 6 of the Act.¹⁷

[40] Subclause 3.1 of the agreement states that:

“Transfer of the Property shall be effected by the following Conveyancing Attorney, Ndlovu Gumede Attorneys (tel: 0[...] 0[...]) (email: b[...]) situated at 2[..] P[...] Street, N[...], R[...], were appointed specifically by the purchaser.”¹⁸

[41] Relying on the common cause facts in this matter read with the applicable principles as set out, *inter alia*, in *De Klerk; Baker and De Jongh*,¹⁹ it was submitted, on behalf of the Applicant, that:

41.1 it was First Respondent's election to appoint the Third Respondent for the purpose of facilitating the transaction;

41.2 in electing to appoint the Third Respondent the conclusion that ought to be drawn is that the Third Respondent was appointed as the First Respondent's agent. The Third Respondent received the funds, not as a party to the agreement, but rather as a third-party agent of the First Respondent;

41.3 it cannot be said that the Third Respondent was the Applicant's agent in that there was no authority given by the Applicant to the Third Respondent for her to act in that

¹⁷ Subparagraph 23.1 *ibid.*

¹⁸ Emphasis added.

¹⁹ Paragraphs [24] to [26] *ibid.*

capacity. Therefore, the First Respondent is liable for the breach of the agreement as the principal of the Third Respondent.

Conclusion

[42] This Court has no hesitation in accepting the said submissions made on behalf of the Applicant. Further, it must be accepted that the failure of the Third Respondent to pay the proceeds of the sale to the Applicant, constitutes a material breach of the agreement.

[43] In the premises, the Applicant is entitled to cancel the agreement. Arising therefrom, the Applicant is entitled to the relief sought.

Costs

[44] It is trite that costs should normally follow the result. Further, it is trite that a Court has a general discretion, to be exercised judicially, when considering an award for costs. The principle that costs should normally follow the result would apply unless any unusual circumstances exist. No such circumstances have been drawn to the attention of this Court. In the premises, the Applicant should be awarded costs.

[45] In its Notice of Motion the Applicant seeks an order that “...*the First to Third Respondents... pay costs of this application on an attorney and client scale.*” Insofar as the Second Respondent is concerned the order sought by the Applicant that he be liable for

costs amounts, in effect, to a costs order *de bonis propriis*. In the opinion of this Court the factors that should be present for this Court, in its discretion, to make such an order, are simply not apparent from the application papers. Arising therefrom, this Court declines to make such an order.

[46] As far as the Third Respondent is concerned, there has been no opposition to the relief sought in the present matter. In the premises, this Court finds that a cost order against the Third Respondent would not be justified or appropriate.

[47] Further, in the opinion of this Court, a punitive costs order against the First Respondent is not, on the facts of this matter, warranted.

Order

[48] This Court makes the following order:

1. The deed of sale entered into between the Applicant and the First Respondent in respect of the immovable property, more fully described as Holding 169, Lindequesdrif Agricultural Holdings, Extension 1, Province of the North-West (*"the immovable property"*) held under Deed of Transfer, number T000069265/2023 (*"The Deed of Transfer"*) is cancelled.
2. The Fourth Respondent is to cancel and reverse the transfer and registration of the immovable property held under the Deed of Transfer, from the name of the First Respondent back into the name of the Applicant.
3. The First Respondent is to pay the costs of this application.

**BC WANLESS
JUDGE OF THE HIGH COURT
JOHANNESBURG**

Date of Hearing: 16 April 2025

Date of *ex tempore* Judgment: 24 November 2025

Date of written Judgment: 30 January 2026

Appearances

On behalf of the Applicant: Adv Boitumelo Potsane

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