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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2023/115242

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 14 January 2026

SIGNATURE

In the matter between:

DUSKYWING (PTY) LTD
(Reg no: 2014/084794/07)

1st Applicant
(1st Counter Respondent)

ELIZABETH SUSANNA VAN DER WALT
(ID No: 6[...])

2nd Applicant
(2nd Counter Respondent)

ELIZABETH SUSANNA VAN DER WALT
(In her capacity as natural guardian and legal
representative of
CARA LORENZA VAN DER WALT
(Id no: 0[...])

3rd Applicant
(3rd Counter Respondent)

and

ADRIAAN JACOBUS SUTHERLAND
(ID No: 6[...])

Respondent
(Counter Applicant)

JUDGMENT: URGENT APPLICATION

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

BEFORE: HOLLAND-MUTER J:

[1] The matter was heard in open court in the urgent court on Tuesday 6 January 2026. The matter consisted of an application and a counter application.

[2] The urgent application stems from an agreement reached between the parties during March 2025 after serious litigation between the parties. The underlying issue(s) is the interpretation of the court order granted on 11 September 2025 by Nyathi J after hearing all parties and the subsequent order embodying the settlement terms reached by the parties.

[3] The parties have a disagreement on the interpretation of particularly paragraphs 8 and 9 of the court order. The indebted loan account in favour of the Respondent (applicant in the court order) was quantified in the amount of R 4 110 764-86 in paragraph 7 of the court order. Paragraph 8 deals with the seeking of an investor/financing by the Second Applicant (Second Respondent in the court order) within 90 days after the settlement is made an order of court. This financing/investor sought is to make payment to the Respondent for the loan account as capitalised in paragraph 7 of the court order.

[4] The relevant portion of paragraph 8 of the order reads as follows: *“That an investor/financing will be sought by the Second Respondent (the Second Applicant in the present urgent application) in order to pay the Applicant (the Respondent in the present matter) the amount due on his account, within 90 days after the settlement*

proposal is made an order of court, in the event that an investor/financing is not secured then Mostert Raubenheimer Inc Attorneys will be given instructions on day 91 to proceed with the transfer of the Spookdraai property, stand 9[...], ... into the name of the Applicant (now Respondent)”.

[5] The provisions of paragraph 8 must be read in conjunction with that in paragraph 9 of the court order. Paragraph 9 clearly states that: *“The Development property at Spookdraai ... will be transferred in whole (comprising of 5 erven) to the Applicant (now Respondent) should the Second Respondent (now Second Applicant) not be able to secure an investor/financing within the agreed upon **90 days** (my underlining) with the specific term that the sub-divisions applied for remain intact”.*

[6] Whilst paragraph 8 refers to payment after securing an investor/financing, paragraph 9 is silent on when payment is to be made. The opposing views are that the now Applicants aver compliance with the court order securing an investor within 90 days, the now respondent avers non-compliance. The now Respondent alleges non-compliance because although the sourced investor contacted the Respondent on day 90 tendering payment of the capitalised due amount before end of March 2026, no payment was made within the 90 days. The investor tendered to pay the amount of R 4,200 000-00 which is more than the quantified amount of R 4 110 764-60.

[7] It is further clear from paragraph 8 that in the event of an investor/financing not secured within the 90 days, then Mostert Raubenheimer Attorneys Inc will be given instruction to proceed with transfer. This can only have one meaning namely that should an investor/financing not be secured within the 90 days term, it will trigger the right to have the property transferred. The court could not find any justification that non-payment within 90 days will trigger the right to transfer.

[8] The disagreement is whether the payment was also due within 90 days or does the 90 days term only refer to the securing of an investor/financing within 90 days. The non securing of an investor/financing within the 90 days is the trigger to have transfer of the property, not the non-payment within the 90 days.

[9] The Respondent instructed his attorneys on day 91, on 11 December 2025 to proceed to transfer the property into his name. This was the trigger for the applicants to approach the court on an urgent basis to interdict the respondent from proceeding with the transfer.

[10] The Respondent opposes the application with a counter urgent application requesting a declarator that payment should also have taken place within the 90 days, freezing of certain bank accounts of the applicants where into payment of R 2 000 000-00 was made by Venter Strategic Ventures (Pty) to the Respondent (payment received by the applicants from Venter Strategic Ventures (Pty) Ltd from the sale of erf 1[...] (a portion of the original five erven); a declarator regarding mis-joinder of the third applicant and non-joinder of Venter Ventures.

[11] The gist of the counter application is the alleged non-compliance with the court order by the Applicants for no payment made within the 90 days.

[12] There were oral negotiations between the Respondent and a Mr P J van der Walt. Van der Walt made an oral offer via telephone to the Respondent for payment of the quantified amount of loan account before the end of March 2026. This conversation transpired within the 90 days as stipulated in the court order. It was further confirmed by Mr van der Merwe (counsel on behalf of the applicants) during argument that the offer was still standing and never formally rejected by the Respondent. He repeated that the offer made was for an amount of R 4 200 000-00, which is more than the quantified loan account as reflected in the court order.

[13] The Respondent instructed his attorney on 11 December 2025 (day 91 after the 90 days fixed in the court order) to start with the transfer of the properties into his name after the oral offer was made by Van der Walt. The Respondent never formally rejected the investor's offer to pay the amount capitalized and this offer was never withdrawn by the investor. The reason for the instruction by the Respondent was the alleged non-compliance with the 90 days term by the applicants. This triggered the urgent applicant brought by the applicants.

[14] The relief was set out in Part A and Part B of the application. Part A provided for interlocutory relief interdicting and restraining the Respondent from taking any steps to procure or effect transfer of the subject matter of the court order, to deal with the subject property in any way pending the finalization of Part B of the application.

URGENCY:

[15] The Respondent attacked the urgency of the application but filed a counter urgent application. The respondent alleged that the application was an abuse of process and defective urgency. It was alleged that the claimed urgency was mere lip service to the requirements of Rule 6(12)(b) as found in **Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another 1977 94) SA 134 (W) at 137F**.

[16] The court is satisfied that the matter is urgent and that the Applicants will not be afforded substantial redress at a hearing in due course. See **East Rock Trading (Pty) Ltd v Eagle Valley Granite and Others (Unreported GJ (11/33767) ZAGPJHC 196 par [6]**. Should the matter stand over to be heard in the normal opposed motion court the transfer of the property will most likely be finalized leaving the Applicants with no relief.

[17] To obtain the relief sought the Applicants must show at least a prima facie right (which is protected in paragraph 8 and 9 of the court order); that there is no other remedy available to protect their prima facie right; that they will suffer irreparable harm if not protected because the property will be transferred to the Respondent and even that the balance of convenience favour the Applicants. The Respondent has a right to enforce secured payment from the investor.

[18] I disagree with the Respondent that the Applicants are the makers of their own pitfall. The undisputed fact is that the Respondent instructed his attorneys to proceed with transfer of the subject property stating the non-compliance of the 90 days set out in the court order. The court allowed the parties to address it on the merits as well as the urgency together. The court is of the view that paragraph 8 and 9 is clear

that the obligation on the Applicants was to source an investor/financing of the capitalised amount in paragraph 7 of the court order.

[19] The interpretation by the Respondent to that payment must also have taken place within the 90 days cannot be correct. If that was the intention of the parties the agreement/court order would have been clear that payment should take place within 90 days. As it is in the agreement/court order sourcing of an investor/financing must take place within the 90 days to make payment possible after the sourcing. There was no time limit agreed on when payment should be made and the inference is that it must be within a reasonable time. The investor undertook to make payment by end of March 2026.

[20] The court is satisfied that the abridgement of the ordinary time frames be condoned.

COUNTER-APPLICATION:

[21] The Respondent *in limine* disputes the authority and locus standi of the Second Applicant. In view of the history between the parties it is rather strange that the Respondent attacks the authority and locus standi of the Second Applicant. The dispute arises from a settled earlier dispute between them. They were in a business relationship which ended in the agreement made an order of court. The agreement would not have been reached by the parties as is if authority was lacking. This is a feeble attempt to divert the court's attention from the real issues. The relief sought cannot be granted as there was compliance with the court order's 90 days timeframe to secure an investor/financing condition.

[22] A similar approach is adopted by the Respondent regarding the Third Applicant. As it became clear during arguments, the Respondent and the Second Applicant were in a romantic relationship before the grapes soured. He is aware of the status of the Third Applicant and he had her cited as a respondent in the previous litigation that resulted in the court order. To now cast his case in this way is another attempt to divert the attention from the real issue. This point cannot succeed.

[23] The points *in limine* regarding lack of authority and mis-joinder has no standing.

[24] The next point *in limine* is the non-joinder of Venter Strategic Ventures is another grasp of straw to divert attention away from the real issue. This will become an issue should the counter application succeed. In view of the court's finding above that the correct interpretation of paragraphs 8 and 9 of the court order is that the sourcing of an investor/financing is required during the 90 days period and that payment of the quantified amount due is not to be made during the 90 days period.

[25] The court allowed the parties to argue the merits as well as the urgency of the application simultaneously. This was done because the question of urgency was intricately part of the merits and it made sense to hear and determine the issue together. It would defeat the purpose of the relief sought if the matter was not heard all together. The issue is straight forward on the dispute and the answer is to be found when paragraphs 8 and 9 is read together.

[26] The Respondent has no legal redress against Venter Strategic Ventures (Pty) Ltd because he has no agreement with Venter nor any clear right on the property because his claim for transfer lapsed on day 90 when the investor made contact with him offering even more than the capitalised loan account and that payment will be made before end of March 2026. There was fulfilment of the condition in paragraphs 8 and 9 of the court order.

[27] The Respondent is not left without any relief. He has an offer in the amount of R 4 200 000-00 from the investor and the offer was confirmed by the Applicant's counsel during the hearing. He should take his recourse against the investor. The counter application cannot succeed.

[28] The court is of the view that the Applicants have proved their case and that they are entitled to an order that the Respondent is interdicted from continuing with any attempts to have transfer of the subject property transferred to his name.

ORDER:

1. The application is granted as prayed for in the Notice of Motion as instituted by the Applicants; Part A & B heard together. The Respondent is not entitled to procure or enforce the transfer of any of the immovable properties forming part of the subject matter of the settlement agreement and court order into his name;
2. All purported steps taken or to be taken by the Respondent to transfer, alienate, encumber, or otherwise deal with the said properties on the basis of alleged non-compliance by the Applicants are unlawful and of no force or effect;
3. The Respondent is to pay the costs of the Applicants on a party-and -party scale for Part A and Part B;
4. The counter application is dismissed with costs on a party-and-party scale.

HOLLAND-MUTER J
Judge of the Pretoria High Court
January 2026

Date of hearing: 6 January 2026

Date of Judgment: 14 January 2026 (uploading onto CaseLines)

Appearances: Applicants: Adv A R Van der MERWE

Advocate with Trust Account

Respondent: Adv R Van der WESTHUIZEN

Advocate with Trust Account