IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case No: D14092/2023

In the matter between:

L[...] E[...] S[...] Plaintiff

and

G[...] M[...] J[...] V[...] R[...] Defendant

J[...] A[...] J[...] V[...] R[...] Third Party

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for handing down is deemed to be 16 February 2026.

ORDER

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1. Judgment is granted in favour of the plaintiff and against the defendant for:

a) Payment in the sum of R800,000.00.

b) Interest on the sum of R800,000 at the rate of 11.75% per annum calculated from 24 November 2023 to date of final payment.

c) Costs of suit, including all reserved costs, to be taxed on Scale B.

2. The defendant is directed to pay the third party's costs of suit, including any reserved costs, on Scale B.

JUDGMENT

SHAPIRO AJ

Introduction

[1] The plaintiff ("Ms S[...]") sues the defendant ("Mr V[...] R[...]") for payment of R800,000.00. Mr V[...] R[...] is Ms S[...]'s son-in-law, being married to the Third Party ("Ms V[...] R[...]") but is currently estranged from her and in the process of what appears to be an acrimonious divorce. Ms S[...] alleges that she loaned the R800,000 to Mr V[...] R[...] and that the loan was repayable on demand. Mr V[...] R[...] admits receipt of the money but alleges that Ms S[...] donated the money to him. Mr V[...] R[...] joined Ms V[...] R[...] to the proceedings in terms of Rule 13, on the basis described below.

The pleadings

<u>Ms S[...]</u>

[2] Ms S[...] alleges that she and Mr V[...] R[...] concluded a verbal agreement of loan in or about November 2021 in terms of which she would lend him R800,000 which would be payable into his personal banking account, and the loan would be repayable on demand, but without the levying of interest or fees. Ms S[...] pleads that she performed in terms of the agreement and made payment of the amount on 23 November 2021. Ms S[...] demanded repayment of the loan from Mr V[...] R[...] on 24 November 2023.

[3] In his Plea, Mr V[...] R[...] admitted receipt of the money in his personal banking

account but pleaded that the payment was a donation to both him and Ms V[...] R[...]. Alternatively, Mr V[...] R[...] pleads that if it should be found that the payment was a loan, then it was made to him and Ms V[...] R[...] jointly.

[4] In the Annexure to Mr V[...] R[...]'s Third Party Notice against Ms V[...] R[...] issued in terms of Uniform Rule 13, he pleads that the payment was a donation to him and Ms V[...] R[...] alternatively was a loan to them jointly and, further alternatively, and if the court found that the loan was not made jointly but rather jointly and severally, Mr V[...] R[...] then claimed a contribution from Ms V[...] R[...] of 50% of the loan, together with 50% of interest claimed and any taxed costs awarded in favour of Ms S[...].

[5] Mr V[...] R[...] then advanced two further alternatives, pleading that if it was found that the payment was a loan, it was paid in substitution of a portion of the loan owing to Mr and Ms V[...] R[...]'s mortgage bond holder and that Mr V[...] R[...] reduced the amount owing on the mortgage bond by R800,000 which was to the benefit of both parties and Ms V[...] R[...] made no such contribution, therefore, entitling him to a declaration that he and Ms V[...] R[...] were not equal co-owners of the immovable property that they owned but rather that his share to the property was 50% plus R800,000 and Ms V[...] R[...]'s share was 50% less R800,000.

[6] Further relief was sought in respect of the proposed sale of the property, but I

was advised that the property had been sold and therefore the relief sought in respect of the sale fell away.

The evidence

[7] Ms S[...] testified that in the weeks before the payment, it had become increasingly clear that Mr V[...] R[...] was struggling financially in circumstances where he had reasonably recently opened his own accounting and tax practice. After discussions with her husband, as well as with Mr and Ms V[...] R[...], she agreed to lend Mr V[...] R[...], R800,000.00 which would then be paid into the couple's mortgage bond account thereby substantially reducing their monthly mortgage bond instalments[1]. Ms S[...] testified that it was agreed that the money would be repayable on demand and that interest would not be charged. Based on this, and on 23 November 2021, Ms S[...] transferred the amount to Mr V[...] R[...]'s personal banking account, having been provided with those details by him earlier that day.

[8] Ms S[...] replied to an email sent by Mr V[...] R[...] with those details and attached a document entitled "G[...] and J[...] loan", which was a Notification of Payment issued by her bank, reflecting the payment of R800,000. The stated reference under "Payee Details" was "Loan from S[...]".

[1] The evidence revealed that the monthly instalments were reduced from approximately R12,500.00 to approximately R3,500.00.

[9] Ms S[...] testified that she loaned the money to Mr V[...] R[...] because he was the one that required the assistance at that stage, even if he and Ms V[...] R[...] would both derive some benefit from the consequential reduction in the monthly bond instalments. Ms S[...] testified that she had done the same for Ms V[...] R[...] when she was on maternity leave and had then decided not to return to work, advancing her the total amount of R700,000.00 in early 2020 that likewise was paid by Ms V[...] R[...] into the bond account, reducing the instalments as well. According to Ms S[...], she did not believe it to be fair to impose a liability on the party who did not require the funds and therefore Ms V[...] R[...] was liable to repay to both her and her husband the R700,000.00 in the same way that Mr V[...] R[...] was liable to repay to her the R800,000.00.

[10] Ms S[...] denied that she had donated the funds to Mr V[...] R[...] and she stated that she had entitled the proof of payment to Mr V[...] R[...] as "G[...] and J[...] loan" because she had been busy at the time working on the documents relating to both this loan and the 2020 loan to Ms V[...] R[...].

[11] Ms S[...] testified that if the R800,000.00 was a loan to both parties, she would have deposited the amount in Ms V[...] R[...]'s account and would not have required Mr V[...] R[...]'s personal banking details.

[12] The 2020 loan was also called up by the S[...]s at the end of 2023 but could not be repaid from the bond account because Mr V[...] R[...] refused to

agree to sign the necessary forms.

[13] Ms S[...] stated that if the amount had been a donation, it would have been declared as such on the relevant tax return for that financial year, which were prepared and submitted by Mr V[...] R[...], who was her tax practitioner.

[14] Ms S[...] was cross examined extensively and on a wide range of issues. She forcefully denied that Mr V[...] R[...] had been pressured into marrying Ms V[...] R[...], as had been put to her. As far as determining whether the payment was a loan or a donation, it was put to Ms S[...] that the payment was always intended to be a donation and that it was "transformed" into a loan only after Mr and Ms V[...] R[...] separated and the relationship between the S[...]s and Mr V[...] R[...] changed. It was suggested that Ms S[...] would have been more particular with her record keeping if it was truly a loan, as had occurred when loans had been made to Ms V[...] R[...] in respect of a business that she purchased and where amounts had been advanced from S[...] Holdings (Pty) Ltd, a company of which the S[...]s and Ms V[...] R[...] were also directors.

[15] Ms S[...] denied this, stating that there was a difference between loans advanced from a business or from her or her husband to another business, which also carried interest charged and had fixed repayment terms, and a loan advanced to her daughter or son-in-law in a personal capacity, where interest was not charged and which loans were payable on demand only.

[16] Ms S[...] denied that the payment to Mr V[...] R[...] was made out of generosity and to thank him for remaining in post when the S[...]s exited a business known as G[...] W[...] I[...] N[...]-F[...](Pty) Ltd after they sold their shareholding in the company. Ms S[...] denied that the funds were given to the V[...] R[...] in the same way that other members of her family had been given gifts when G[...] W[...] was sold and that Ms V[...] R[...]'s cousin had been given the Copy Ink business by the S[...]s, in the same spirit of generosity. It was put to Ms S[...] that the payment was made to Mr V[...] R[...] in 2021 when the transaction between G[...] W[...] and purchaser of the shares was finalised. Ms S[...] denied this, stating that no further amounts had been paid to Mr S[...] after the initial sale of shares for R120 million in 2018[2]. According to Ms S[...], Mr V[...] R[...] remained at his employment because he did not have another job to go to and it would have been irresponsible for him to resign without the prospect of employment.

[17] It was put to Ms S[...] that the amounts advanced to Ms V[...] R[...] likewise had been gifts, something that Ms S[...] denied. She stated that she and her husband had advanced a number of loans to Ms V[...] R[...] including for the original purchase of Ms V[...] R[...]'s apartment, when she purchased her car and for her caesarean section when her first child was born.

[18] Ms S[...] was pressed on payments made to Ms V[...] R[...] and which

were described as "director's fees" that were accompanied with emailed instructions from her about where the monies should go, including whether amounts should be paid either to her or to Mr S[...] in the payment of certain loans. Ms S[...] admitted that the payments were made and stated that the payment of director's fees was justified and that she was equally entitled to make suggestions or to give direction to her daughter about what should happen with that money.

[19] It was put to Ms S[...] that the payment of R800,000 was a donation but was described as a "loan" essentially to avoid a liability to pay tax on that amount. Ms S[...] denied this, stating that the payment advice was described as a loan because that was its true nature. She denied that the loan had been made jointly to Mr and Ms V[...] R[...] and stated that, were this the case, the money would have been paid to her daughter and that just as Ms V[...] R[...] was liable to repay *inter-alia* the R700,000.00, Mr V[...] R[...] was liable to repay the R800,000.00. Ms S[...] denied that the demand for repayment was manufactured after Mr and Ms V[...] R[...] separated stating that it had always been a loan, but accepted that after the relationship broke down, the loan was then called up.

Ms V[...] R[...]

[20] Ms V[...] R[...] testified after Ms S[...] and her evidence was largely consistent with Ms S[...]'s evidence. Ms V[...] R[...] confirmed that the monies advanced to her by her parents, either jointly or separately, were in the nature of

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[2] By the end of the trial, this was undisputed.

loans (whether personally or to her in respect of the business that she purchased) and that it had always been clear that the amounts would be payable at some point in the future. Ms V[...] R[...] testified that the loans of R700,000.00 had been called up by her parents at the end of 2023 but that she had been unable to make payment because Mr V[...] R[...] refused to permit a withdrawal from the access bond account in respect of the mortgaged property. She testified that much of the loan advanced in respect of the purchase and running of her business had been repaid and she denied that the amount of R800,000.00 was either intended to be a loan to her and Mr V[...] R[...] jointly or that it was intended to be a donation.

[21] According to Ms V[...] R[...], she was wholly liable to repay the amounts advanced to her and Mr V[...] R[...] similarly was liable to pay all amounts advanced to him - even if they both derived a certain benefit from the ultimate destination of the funds. Ms V[...] R[...] also denied that the loan to Mr V[...] R[...] was called up or re-defined as a loan after she separated from him.

[22] Ms V[...] R[...] confirmed that she had received several loans from her parents and from S[...] Holdings (Pty) Ltd, reaching back in time to assist her in purchasing her first apartment and vehicle and that she had always intended to repay these amounts as she understood she was obliged to do. Ms V[...] R[...] accepted that she was paid director's fees from time to time by S[...] Holdings (Pty) Ltd and stated that she was entitled to those fees in her capacity as a

director. She accepted that the payment came with instructions and/or requests from Ms S[...] about how the monies should be treated, but that this was not objectionable to her and where loan repayments were required, they were made. The amounts were repaid because they were not gifts.

[23] Ms V[...] R[...] also denied that the Copy Ink business was given to her cousin and testified that it had been sold first to Mr S[...], who then sold it to S[...] Holdings who sold it to her cousin for the value of the loan account in the business, which stood at approximately R1.4 million.

[24] A portion of Ms V[...] R[...]'s cross-examination dealt with either the history of her relationship with Mr V[...] R[...] or the fallout from their estrangement. I do not propose to deal with that evidence in any detail, save to state that it was not put to her that Mr V[...] R[...] had been pressured into marrying her by her parents.

Mr V[...] R[...]

[25] Mr V[...] R[...] testified in his own defence. He described the history of his relationship with Ms V[...] R[...][3] and how a number of the financial decisions made by the couple were against his better judgement but were acceded to because it was what his wife and parents-in-law had decided. He described the S[...]s as a generous family and agreed that he and Ms V[...] R[...] dined at the

S[...]s' home approximately four nights a week and on occasion were taken on holiday together with them.

[26] Mr V[...] R[...] stated that he remained at G[...] W[...] after the S[...]s' departure at their request, so that they could have a line of sight into what was occurring at the company because the transaction was not yet complete and further amounts were due to be paid to the shareholders if certain profit warranties and the like were met. Mr V[...] R[...] testified that he was not consulted before Ms V[...] R[...] decided to resign but that this decision was supported by the S[...]s, who gifted Ms V[...] R[...] in total R700,000.00 in the circumstances already described. He acknowledged that Ms V[...] R[...] had funded the deposit of the matrimonial home and had paid the transfer costs, whilst also agreeing that the effect of the R700,000 payment was substantially to lower the bond repayments for which he was responsible.

[27] According to Mr V[...] R[...], Ms S[...] offered to give him R800,000.00 in late 2021 at a time that his fledgling business was not generating sufficient income. He described the gift as being for two reasons, being a gift from the S[...]s for staying in post at G[...] W[...] and out of generosity to assist in reducing his monthly financial burden[4]. Mr V[...] R[...] insisted that the R800,000.00 was a donation. He testified that he was responsible for the submission of Ms S[...]'s tax returns and that he had been told that the gift would be described as a loan for

[3] Although he said nothing about being pressured into marrying Ms V[...] R[...]

tax purposes and that if there was any query from SARS, this would be dealt with by the tax practitioners dealing with S[...] Holdings' tax affairs. He accepted that the tax returns that he submitted on behalf of Ms S[...] did not reflect the donation from her to him and that he did not submit the relevant form required when donations were disclosed.

[28] Mr V[...] R[...] agreed that he had refused to permit Ms V[...] R[...] draw R700,000.00 from their mortgage bond account to pay to the S[...]s at the end of 2023 because, as he put it, she had acted unreasonably in refusing to permit him to hire out the matrimonial home to reduce their expenses.

[29] According to Mr V[...] R[...], the R800,000.00 donation was weaponised after he and his wife separated and became part of a strategy by the S[...]s and Ms V[...] R[...] to cripple him financially, both by demanding payment and by instituting a series of cases against him.

[30] He accepted that he had not in either an email or text message recorded his understanding that the R800,000.00 was a donation or what he had been told about the description of the payment and the strategy behind describing it as a loan and not a donation. Mr V[...] R[...] also accepted that no further payments were made to the shareholders of G[...] W[...] by the purchaser after the initial payment as the effects of Covid 19 meant that the profit targets that had to be

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[4] Mr V[...] R[...] did not testify about the alleged gifts/benefits given by the S[...] to other members of the family when the shares were sold.

met were impossible to reach – and that this was clear to all from early 2020.

[31] Mr V[...] R[...] closed his case after the conclusion of his evidence.

The proper approach to the resolution of conflicting versions

[32] The payment of R800,000.00 was either a loan or it was a donation. In this regard, the versions of Ms S[...] and Ms V[...] R[...] on the one hand, and Mr V[...] R[...] on the other, are irreconcilable.

[33] The proper approach to resolving this dispute was set out by the Supreme Court of Appeal in *Stellenbosch Farmers' Winery*[5] as follows:

"To come to a conclusion on the disputed issues a court must make findings on *(a)* the credibility of the various factual witnesses; *(b)* their reliability; and *(c)* the probabilities. As to *(a)*, the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to *(b)*, a witness' reliability will depend, apart from the factors mentioned under *(a)*(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to *(c)*, this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of *(a)*, *(b)* and *(c)* the court will then, as a final step, determine whether the party burdened with the *onus* of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."

[34] In this case, I cannot determine the factual disputes without resolving two further questions: is there a presumption against donations and who bears the onus of proving that a payment is a donation and not a loan?

A presumption against donations and a shifting onus of proof?

[35] There is not a presumption against the making of a donation, properly so called. Our courts have referred to a "strong probability against the gratuitous giving away of property out of pure liberality"[6] but have found that the "presumption" is at most a rebuttable presumption of fact or an inference that may in certain circumstances be drawn, depending on the facts of each case[7]

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[5] *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA) at para [5]

[6] *Barkhuizen v Forbes* 1998 (1) SA 140 (E) at 150B-C

[7] *Barkhuizen*, at 156C-D

and is nothing more than a general rule of logic, founded on common sense and ordinary reasoning, that donations are not lightly to be inferred[8].

[36] The so-called presumption does not however absolve a plaintiff from proving that monies advanced were repayable by a defendant. The court is simply obliged "at the end of the day to bear in mind that a donation is an inherently unlikely act and to accord that consideration whatever weight is appropriate in the particular circumstances of the case"[9].

[37] Simply put, when a defendant raises a defence of donation against any claim, the onus of proof remains on the plaintiff. The defendant has at most a burden of rebuttal against a *prima facie* case established by the plaintiff as "human nature being what it is, people do not ordinarily part with their property for nothing… [and] the evidence of the party contending for a donation in his favour calls for careful scrutiny" [10].

A simulated transaction?

[38] The question of whether the disputed transaction was a loan or a donation goes further than a dispute or even a potential misunderstanding of the nature of the transaction by the parties.

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[8] *Barkhuizen,* at 158D-E
[9] *Barkhuizen*, at 159E-F
[10] *Mogudi v Fezi* (A67/07) [2007] ZAWCHC 46 (28 August 2007) at paras [31] and [33]

[39] According to Mr V[...] R[...], the email and proof of payment that was sent to him by Ms S[...] on 23 November 2021 was intentionally mis-described in order to disguise the true nature of the transaction, so that the payment of donations tax could be avoided.

[40] Put differently, and although Mr V[...] R[...] did not describe the transaction in these terms, his defence was that the "loan" was a simulated transaction – it was made to look like a loan, even though it was not one. In other words, the "loan" was fictitious.

[41] The burden of proof on the question of whether a contract is fictitious rests squarely on the party that asserts it, and if a contract is not what it seems to be, it is for that party to prove it[11] but "firstly, however, we must assume that the nature of the transaction is what it purports to be, and the onus is upon him, who asserts that it is something different to prove that fact" [12].

[42] In *Rock Foundation*[13], the High Court held as follows:

"[55]… A simulated transaction is a dishonest transaction in terms of which the parties intend a legal effect which is different to the terms that the agreement expresses ('*Consideration 1*'), which the parties dress up in a guise ('*Consideration 2*') and which is

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[11] *Ruskin NO v Thiergen* 1962 (3) SA 737 (A) 746 D-G

[12] *Zandberg v Van Zyl* 1910 AD 302 at at pg 314

[13] *Rock Foundation Properties CC and Another v Dosvelt Properties (PTY) Ltd and Another* (20/28515) [2022] ZAGPJHC 1018 (21 December 2022) at paras [55] and [56]

created for the purpose of deceiving (by concealing) the real transaction ('*Consideration 3*'). A party claiming simulation must satisfy the court that there is a real intention, definitely ascertainable, which differs from the simulated intention. The court must be satisfied ('*Consideration 4*') that there is some unexpressed agreement or tacit understanding between the parties that is not borne out by the terms of the agreement or some secret understanding between them. If this were not so, it could not find that the ostensible agreement is a pretense…

[56] As part of the inquiry, the Court must determine whether the real nature and implementation of the contracts are consistent with their ostensible form."

[43] In *Uys v National Credit Regulator*[14], the Supreme Court of Appeal held as follows:

"[28] … for the court to determine the relevant intention of the parties and whether an agreement is simulated, it must first be satisfied, on the available and admissible evidence, that there was some unexpressed or tacit agreement between the parties, which was not reflected in the agreement.

[29] An important corollary of these principles is that if the Court concludes, on the available and admissible evidence, that one of the parties genuinely intended to conclude a contract of type "X" and did not intend to disguise it as a contract of type "Y" then there can be no finding of simulation".

Analysis of the evidence

[14] *Uys NO and Others v National Credit Regulator and Another* (869/2023) [2025] ZASCA 34; [2025] 3 All SA 71 (SCA) (1 April 2025) at paras [28] and [29]

[44] It is clear that Ms S[...] and her husband were intimately involved in the financial affairs of Mr and Ms V[...] R[...], to the extent of giving direction as to how various deposits should be handled by Mr and Ms V[...] R[...].

[45] However, the evidence shows that this dynamic suited Mr and Ms V[...] R[...], who ultimately benefited from the largesse and interest of Mr and Ms S[...].

[46] Both parties have sought to focus on different parts of various emails exchanged between them to prove that the transfer of R800,000.00 was a loan or was a donation.

[47] It seems to me that the starting point in any analysis of the evidence must be a recognition that emails exchanged between mother and daughter or between mother-in-law and son-in-law were not intended for litigation and were not drafted by lawyers. It was a convenient way for the family to communicate internally amongst themselves. From the documents before me, taken together with the chronology of events, there is no evidence to suggest that emails were written, or attachments were labelled with a view to a potential dispute arising sometime in the future.

[48] At face value, the documents corroborate Ms S[...]'s version. The email from Ms S[...] to Mr V[...] R[...] carried an attachment that had been labelled as "G[...] and J[...] loan" and the proof of payment itself carried a reference for the

payee (Mr V[...] R[...]) of “Loan From S[...]”.

[49] There were a series of other emails introduced into evidence that recorded (on their face) loans either being advanced to Ms V[...] R[...] or requiring Ms V[...] R[...] to repay loans. When money was paid to Ms V[...] R[...] for directors' fees without any repayment required, the email said so together with a suggestion that the monies used to pay electricity charges or to make provision for tax.

[50] Mr V[...] R[...] made much of the fact that loans from Mr S[...] or from the company to Ms V[...] R[...] were accompanied by repayment schedules, which did not occur in respect of the disputed transaction. The evidence of both Ms S[...] and Ms V[...] R[...] was that a distinction was drawn between loans advanced for business purposes and loans to the parties in respect of their private affairs.

[51] This explanation is consistent with a further factor that the loans advanced to Ms V[...] R[...] and her company, Copy Ink, were repayable within a defined term, together with interest whilst the disputed transaction while the earlier loans to Ms V[...] R[...], of R700,000.00 were repayable on demand and were interest-free. There was therefore no need for either an interest calculation or a repayment schedule.

[52] I must also consider the undisputed evidence given by Ms S[...] that loans

were advanced by her and her husband to Ms V[...] R[...] for other personal expenses, such as her caesarean section when Mr and Ms V[...] R[...]'s child was born. This was neither disputed during the cross-examination of Ms S[...] or Ms V[...] R[...] nor by Mr V[...] R[...] in his evidence.

[53] In an attempt to demonstrate that the S[...]'s were an incredibly generous family who handed out valuable gifts to other family members at the same time that the "gift" of R800,000.00 was advanced to Mr V[...] R[...], Mr V[...] R[...] instructed his counsel to highlight various gifts and liberal transactions between the S[...]'s and various extended family members. Ms S[...] dealt with each of these alleged transactions and demonstrated that what had been put to her by Mr V[...] R[...] was factually inaccurate (at best) and false and misleading (at worst). Mr V[...] R[...] did not refer to this evidence at all when he testified.

[54] So, if the payment of R800,000.00 was not part of a series of handouts by the S[...]s, is there any other evidence that would support the payment having been made as a donation?

[55] Certainly, there is no objective evidence to this effect. In addition, Mr V[...] R[...] (who was Ms S[...]'s tax practitioner, dealing with her tax affairs) did not prepare or upload the relevant SARS disclosure forms in the 2021/2022 financial year disclosing the donation by Ms S[...], if in fact it was a donation.

[56] Mr V[...] R[...]'s explanation for this was that, although the advance was a donation, it was disguised as a loan on instructions from Ms S[...] and the accountants dealing with the company's affairs on the basis that if SARS raised any queries about this, the company would then deal with them on behalf of Ms S[...].

[57] I found this explanation to be somewhat tortured, and I have difficulties in accepting it: to do so, I would have to accept that Ms S[...] intentionally saved the proof of payment with a false description and included a false description in the proof of payment itself. I would also have to accept that Mr V[...] R[...], knowing this, made himself a party to what, in effect, was a fraud on the fiscus.

[58] Furthermore, it is telling that when Ms S[...] called up the loan of R700,000.00 advanced to Ms V[...] R[...], the reason that Mr V[...] R[...] gave for refusing to agree to access the mortgage bond and to repay this was because Ms V[...] R[...] had been acting unreasonably in refusing to permit hiring out of the matrimonial home.

[59] Mr V[...] R[...] did not say that he refused to agree to the payment because the amount was not a loan at all but rather was a gift. The clear import of his evidence in this regard was that, had Ms V[...] R[...] acted more reasonably, he would have considered accessing the mortgage bond to repay the R700,000.00.

[60] It makes no sense that Mr V[...] R[...] would be given a gift of R800,000.00 whilst Ms V[...] R[...], being the S[...]s' daughter, would be required to repay the amounts advanced to her.

[61] Mr V[...] R[...]'s further explanations for the "donation" was that he was being rewarded for staying in post and feeding information to the S[...]s so that they could determine what further amounts were due to them arising out of the sale of the shares in G[...] W[...].

[62] This version, however, is inconsistent with the undisputed evidence that, by mid-2020, it had been clear that G[...] W[...] would not meet its targets because of the effect of the Covid pandemic and further that no further payments were received. In any event, if the payment was some form of reward for Mr V[...] R[...]'s loyalty, it does not make sense that it was paid in November 2021, well over a year after he left G[...] W[...] and set up his own practice – and where no further payments had been made to the S[...]s.

[63] I cannot ignore that Mr V[...] R[...] provided what appear to be false instructions to justify the "donation", being the largesse handed out to members of the extended S[...] family. These instructions were provided for a specific purpose, which was to place the “donation” in context and to create the impression that the payment was one of many from the same source and for the same reason, being the S[...]s' generosity. If there was truth to these instructions,

no doubt Mr V[...] R[...] would have testified about them during examination in chief, and he did not.

[64] In the absence of any objective evidence supporting Mr V[...] R[...]'s version and his clear attempt to mis-characterise the true facts to advance his version, I do not consider his version to be reliable and credible.

[65] Mr V[...] R[...] was not an impressive witness. Throughout his evidence, he sought to create an impression of a man buffeted by events, who had no say in anything and was simply a traveller, not only in his professional life, but his personal life as well. According to Mr V[...] R[...], Ms V[...] R[...] did not even discuss her intentions not to return to G[...] W[...] after the birth of their child and arising out of complications from the birth. I do not find this to be credible.

[66] I cannot ignore that Mr V[...] R[...] did not testify in line with several instructions that he gave his counsel and which were put during cross examination of Ms S[...]. One would have thought that if in fact Mr V[...] R[...] had been compelled to marry Ms V[...] R[...] for reasons somehow of confidentiality within the family and its financial affairs, that he would have testified about this. He did not do so. As stated above, his attempted mischaracterisation of the true facts in respect of the wider S[...] family were demonstrative of a party who was seeking to create a version to justify his defence.

[67] Mr V[...] R[...]'s explanation for why the transaction which was described as a loan was not a loan is not credible, for the reasons set out above. I am not prepared to accept, without more, that both he and Ms S[...] chose to involve themselves in a potential fraud against the fiscus by intentionally creating misleading documents. There is simply no evidence that the transaction was simulated and the suggestion that it was is also inconsistent with the S[...]s' previous conduct not only in advancing loans but requiring them to be repaid.

[68] Mr V[...] R[...]'s credibility is further diminished when one considers the alternative claims advanced in the Third Party Notice. He sought orders declaring that if I found the amount to be a loan, then he and Ms V[...] R[...] were not equal co-owners of the immovable property that they owned but rather that his share to the property was 50% plus R800,000.00 and Ms V[...] R[...]'s share was 50% less R800,000.00 because Mr V[...] R[...] advanced the full amount to the mortgage bond account.

[69] Mr V[...] R[...] knew that R700,000.00 had been paid into that account in 2020, to his benefit as well. He knew that Ms V[...] R[...] had paid the deposit on the property. Yet, he opportunistically sought to manufacture an advantageous fallback position that was based on a false premise, to deprive Ms V[...] R[...] of what was due to her.

[70] Both Ms S[...] and Ms V[...] R[...] were subjected to searching cross-examination and their evidence emerged intact, consistent with the

objective documentary evidence.

[71] I find it to be credible and in line with the authorities set out above that Mr and Ms S[...] would not simply give money to their daughter and son-in-law, even if they were able to do so. Mr and Ms V[...] R[...] were not only adults, but parents of children. Even if repayment terms were generous and no or little interest was charged, the view that there are at least had to be the prospect of the repayment of funds and that Mr and Ms V[...] R[...] ultimately were accountable for their lifestyle and choices not only makes sense but, again, is consistent with the objective, documentary evidence.

[72] If Mr and Ms S[...] were not prepared to give money to Ms V[...] R[...] for her caesarean section, it seems to me to be logical that they would not simply donate R800,000.00 to their son-in-law. This is why both the proof of payment and the email referred to a "loan" because that is exactly what the transaction was and was consistent with the S[...]s' previous conduct.

[73] Much of the cross-examination of Ms S[...] and Ms V[...] R[...] and the evidence of Mr V[...] R[...] related to events that occurred after the disputed transaction, and which surrounded the breakdown in the V[...] R[...]' marriage. It was suggested that the S[...]s had demanded repayment of the R800,000.00 to punish Mr V[...] R[...] and to cripple him financially ahead of the contested divorce.

[74] Whilst this evidence generated much heat, it did not create light: regardless of whether the S[...]s acted magnanimously or cynically in demanding repayment at the end of 2023, the only real question is whether the amount was advanced as a loan or a donation in 2021.

[75] If a loan was advanced in 2021, which was repayable on demand, the S[...]s were entitled to demand repayment and it is not for this Court to criticise the timing or reason for that demand. The sole focus of this case is the disputed transaction in November 2021.

[76] I am satisfied that Ms S[...] has discharged the onus resting upon her to demonstrate that the payment of R800,000.00 to Mr V[...] R[...] in November 2021, was a loan, repayable on demand. I reject Mr V[...] R[...]'s version that the payment was a donation as inconsistent with the objective facts, not credible or reliable and improbable. To quote *Rock Foundation*, Mr V[...] R[...] has not satisfied me that "*there is a real intention, definitely ascertainable, which differs from the simulated intention*" or that there was "*some unexpressed agreement or tacit understanding between the parties that is not borne out by the terms of the agreement or some secret understanding between them*".

[77] I do not accept that the loan was made to Mr and Ms V[...] R[...] jointly. Firstly, it was not Mr V[...] R[...]'s case that the monies advanced to Ms V[...] R[...]

in 2020 were a loan to him and his wife jointly in circumstances where those funds were paid to Ms V[...] R[...].

[78] I accept the evidence of Ms S[...] that if it was intended that the loan be a joint one, she would have paid the amounts to her daughter and would not have needed to request Mr V[...] R[...]'s bank account details in order to make the payment to him.

[79] Mr and Ms V[...] R[...] are married out of community of property and in the same way that Ms V[...] R[...] was responsible for repayment of loans advanced to her (for, among other things, her caesarean section) Mr V[...] R[...] likewise was responsible for repayment of the amounts advanced to him.

[80] That both parties chose to deposit the loan monies in their joint mortgage bond account to their mutual benefit does not change either the nature of the transaction or the identity of the debtor.

[81] I am satisfied that Ms S[...] has discharged the onus of proving that the R800,000.00 was advanced as a loan to Mr V[...] R[...] alone, repayable by him on demand.

[82] There is no reason why costs should not follow the result in the circumstances where Ms S[...] has been successful in her claim. Mr V[...] R[...]'s

claim against Ms V[...] R[...] has failed, and the same result should ensue. Given the nature of the matter, I am satisfied that costs should be taxed on Scale B.

Orders granted

[83] I grant the following orders:

1. Judgment is granted in favour of the plaintiff and against the defendant for:

a) Payment in the sum of R800,000.00.

b) Interest on the sum of R800,000 at the rate of 11.75% per annum calculated from 24 November 2023 to date of final payment.

c) Costs of suit, including all reserved costs, to be taxed on Scale B.

2. The defendant is directed to pay the third party's costs of suit, including any reserved costs, on Scale B.

SHAPIRO AJ

APPEARANCES

Date Heard	:	24 to 26 November and 4 December 2025
Date Delivered	:	16 February 2026
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