



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION – MAHIKENG**

Case No: M 310 / 2022

In the matter between:

TJ MAMPE TRADING AND PROJECTS CC

PLAINTIFF

And

REGISTRAR OF DEEDS, VRYBURG

1st DEFENDANT

NORTH WEST HOUSING CORPORATION

2nd DEFENDANT

MEC OF THE DEPARTMENT OF

CO-OPERATIVE GOVERNANCE, HUMAN

SETTLEMENTS & TRADITIONAL AFFAIRS

NORTH WEST PROVINCE

3rd DEFENDANT

HEAD OF THE DEPARTMENT – THE

DEPARTMENT OF CO-OPERATIVE

GOVERNANCE, HUMAN SETTLEMENT &

TRADITIONAL AFFAIRS – NORTH WEST

PROVINCE

4th DEFENDANT

HEMCA MOTORS (PTY) LTD

5th DEFENDANT

SHELL SA (PTY) LTD

6th DEFENDANT

PREMIER OF THE NORTH WEST PROVINCE

7th DEFENDANT

MEC OF THE DEPARTMENT OF PUBLIC

WORKS, ROADS AND TRANSPORT

8th DEFENDANT

HEAD OF DEPARTMENT, DEPARTMENT

OF PUBLIC WORKS, ROADS AND

TRANSPORT – NORTH WEST

9th DEFENDANT

CORAM: MAODI AJ

Date judgment reserved: 15 August 2025

*Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **18 March 2026 at 10h00.***

ORDER

1. The point in limine of *lis pendens* is granted.
2. The application is stayed pending final determination of the matter under case 1026/11.
3. The applicant to pay costs on scale B, such costs to include those consequent upon the employment of two counsel.

JUDGMENT

MAODI AJ

Introduction

- [1] This is an application involving rights of ownership over immovable property and validity of deeds of sale concluded by certain of the parties over the said immovable property. The immovable property forming the subject of this matter is Erf 1[...], Unit [...], Mmabatho, Registration Division JO, North West Province (the property). Although some of the respondents filed papers, not all respondents participated or were represented in the proceedings. Only the applicant (Mampe), the first respondent (Registrar) and the fifth respondent (Hemca) were represented at the hearing of the matter and to whom I will refer as stated herein. I will refer to the other parties as cited on the notices.

Applicant's case

- [2] Mampe's application is set out in its notice of motion as follows:
- “1.The first respondent is ordered to execute the registration of the transfer of Erf 1[...], Unit [...], Mmabatho, Registration Division JO, North West Province (“the property”)(to the applicant, on the registration documents previously lodged on its behalf;
- Alternatively,
- 1.1The first respondent is ordered to execute the registration of the transfer of Erf 1[...], Unit [...], Mmabatho, Registration Division JO, North West Province (“the property”) to the applicant, upon the lodgment of fresh registration documents.
2. The first respondent is ordered to immediately remove the interdict/caveat (i.e the right of first refusal registered against the Title Deed – Certificate of

Title Deed Number T[...] in favour of Shell SA (Pty) Ltd on the property as per court order dated 21st July 2011 in case no: 1026/11.

3. It is declared that the applicant lawfully acquired ownership of Erf 1[...], Unit [...], Mmabatho, Registration Division JO, North West Province (“the property”) in April 2009.

- [3] Mampe’s case as per its founding affidavit is that it seeks a mandamus against the first respondent in respect of property on which a Shell filling station is being operated by Hemca. On 26 March 1997 the North West Provincial Government entered into a lease agreement with the sixth respondent in respect of the property. The lease agreement was for a period of five years but renewable. At some point, the sixth respondent sub-let the property to Hemca. On 21 April 2009 the property, together with another property cited as 1728 Unit 6 Mmabatho, were being sold by the second respondent. Mampe signed an offer to purchase both properties. Property 1[...] Unit [...] Mmabatho was transferred into the names of Mampe.
- [4] On 18 May 2009 Mampe entered into a deed of sale with Hemca over the property. In terms of Clause 3 of the deed of sale the purchase price was R 1 200 000, 00. Hemca was required to pay a deposit of R 1 100 000, 00 to the conveyancer within 7 days of signature of the deed of sale. The sale and transfer of the property did not materialise as the Registrar rejected transfer documents lodged with it on the basis that a competent certificate of authority as required by Item 28 (1) of Schedule 6 of the Constitution of the Republic of South Africa, 1996 had not been obtained. The certificate was provided on 4 May 2011 by the Director General – Department of Rural Development and Land Reform.

- [5] As the only query raised by the Registrar had been addressed, the conveyancers lodged documents for registration. However, on 20 June 2011, the Registrar refused to register transfer on the basis that the Registrar was being investigated due to properties in Mmabatho and Mafikeng being illegally disposed of by unauthorised persons. This led to a protracted litigation under case number 1026/11 in this Division.
- [6] Mampe states that it acquired ownership of the property on 21 April 2009, but only entered into a formal offer to purchase with the second respondent on 26 March 2020. On 27 May 2021 the second respondent issued a letter confirming that the property had been sold to Mampe in April 2009. This was pursuant to a letter issued by the Chief Financial Officer of the second respondent on 14 November 2019 confirming that the property was fully paid for.
- [7] The deed of sale between Mampe and Hemca lapsed on 18 May 2009 due to Registrar's refusal to register transfer. Mampe and Hemca have, to date, not been able to agree on a new purchase price after a lapse of 13 years since the date of aborted deed of sale. Therefore, Hemca can no longer be party to the registration of transfer of the property as previously contemplated.
- [8] On 21 July 2011 Madam Justice Kgoele of this Division made a court order by agreement between the parties, under case number 1026/11, that a caveat/interdict be registered against the title deed (Certificate of Township Title Deed Number T[...]) of the property in order to prevent any alienation of the property, pending finalisation of the application therein. There is no longer any justification for retention of the caveat/interdict registered against the property in favour of the sixth

respondent by the Registrar despite case number 1026/11 still pending in this Division. Mampe has withdrawn its participation in case number 1026/11 in order to pursue this application.

- [9] On 29 July 2021 the third respondent consented to a draft order that the Registrar execute transfer of the property to Mampe and thereafter to Hemca. However, the said draft order was not made an order of court. On 4 August 2021 the second respondent filed its notice of withdrawal of its defence under case number 1026/11.

First respondent's case

- [10] The Registrar raised two points *in limine*. That of *lis pendens* and non-joinder. The issue of non-joinder was addressed and I see no need to concern myself with this aspect. With regard to *lis pendens*, the Registrar states that during 2013, Mampe under case number 1026/11, sought a declarator against the Registrar to transfer the property to Mampe, and thereafter to Hemca. The said proceedings under case 1026/11 are still pending in this Division and have not been disposed of. Annexure "MTL1" is the process in respect of the said proceedings. The same relief involving the same property is being sought in casu by Mampe. In 2015 Mampe, by agreement, caused a caveat/interdict to be registered against the title deed of the property pending finalisation of the application under case number 1026/11.
- [11] During 2016, under case number M294/11, Mampe brought another application against the Registrar and others for registration and transfer of the property to itself. The matter is still pending.

[12] The property has not been registered yet and the original documents lodged are still in a safe at the Registrar's offices. This is because the matter is linked to another transaction forming the subject of an investigation by the Special Investigation Unit (SIU). The property was first registered in favour of the former Bophuthatswana Government by certificate of title T[...]. In May 2011 the property was transferred into the North West Provincial Government in terms of item 28 of Schedule 6 of the Constitution, Republic of South Africa.

[13] The first lodgment took place on 17 December 2009 and consisted of the following four transactions:

- (a) VA application for T[...] (Verlore Akte, an application for the issuing of certified copy to replace a lost deed).
- (b) Transfer of Erf 1[...] from NWPG to TJ Mampe Trading and Projects CC for an amount of one hundred and twenty-four thousand one hundred and ten rands (R 124 110, 00).
- (c) Transfer from TJ Mampe Trading and Projects CC to Hemca Motors (Pty) Ltd for an amount of one million two hundred thousand rands (R 1 200 000, 00).
- (d) Bond by Hemca Motors in favor of Standard Bank for the sum of one million two hundred thousand rands (R 1 200 000, 00) over Erf 1[...] Mmabatho Unit [...].

[14] On 22 December 2009 the batch was rejected as item 28(1) of Schedule 6 of the Constitution was to be lodged for vesting. Following this, the transaction was lodged on 9 June 2011 and was rejected at lodgment due to non-linking of batches. It was then re-lodged immediately on 9 June 2011. The batch now consisted of five transactions, namely:

- (a) Item 28(1) Schedule 6 of the Constitution vesting the property on NWPG.
- (b) VA application for T[...] (Verlore Akte, an application for the issuing of certified copy to replace a lost deed).

(c) Transfer of Erf 1[...] from NWPG to TJ Mampe Trading and Projects CC for an amount of one hundred and twenty-four thousand one hundred and ten rands (R 124 110, 00).

(d) Transfer from TJ Mampe Trading and Projects CC to Hemca Motors (Pty) Ltd for an amount of one million two hundred thousand rands (R 1 200 000, 00).

(e) Bond by Hemca Motors in favor of Standard Bank for the sum of one million two hundred thousand rands (R 1 200 000, 00) over Erf 1[...] Mmabatho Unit [...].

[15] On 21 June 2011 the Registrar sent an e-mail to Provincial Depart of Public Works informing the Department of the transaction as it is practice to do so. The Department of Public Works responded that the transfer must not be registered. The Registrar then informed Venter Booysen and Ferreira Attorneys that the transfer was not registered on 20 June 2011. On 23 June 2011 the Registrar received correspondence from the conveyancers that the transfer should be registered and attached copies of letters from second respondent confirming sale of the property to Mampe. The registration could not take place due to custodianship of the property being under Department of Public Works and Roads.

[16] On 23 June 2011 the Registrar informed the conveyancers that transfer could not be registered due to the objection by the Department of Public Works and Roads. On 30 June 2011 the Registrar was served with a notice of motion under case number 1026/11. The same notice of motion was again served on the Registrar on 25 October 2013. On 19 October 2013 the Registrar was served with a court order, which was recorded, captured and filed as interdict number I-803/2015I. on 23 June 2016 the Registrar was served with a notice of motion under case number M294/2016.

[17] On 3 August 2020 another batch of two was lodged with the Registrar, which consisted of two transactions, to wit:

(a) VA application in terms of Regulation 68(1) of DRA for T[...].

(b) VA application signed by MEC Mothibedi Gordon Kegakilwe on behalf of the NWPG.

It was a transfer of the property from NWPG to Mampe. The purchase price was now three hundred and forty thousand rands (R 340 000, 00) with the purchase date being 3 January 2020. On 6 August 2020 the Registrar reported this to the SIU and raised rejection notes. The batch was rejected out of the system on 11 August 2020. On 22 June 2022 the Registrar was served with a notice of motion under case number M310/22.

[18] The power of attorney was signed on different dates with different amounts. The power of attorney dated 19 July 2009 was for an amount of R 124 110, 00; whereas the power of attorney dated 24 June 2020 for the same property being sold, eleven years later, was for an amount of R 340 000, 00. The 2020 offer to purchase does not have a description of the property being sold. This is the reason that the matter is being investigated by the SIU.

Second respondent's case

[19] The second respondent, although no one appeared for it at the hearing of the matter, filed an answering affidavit. The second respondent states that there is a matter pending under case number 1026/11 wherein Mampe issued an application jointly with Hemca seeking an order that the property be transferred by the Registrar to Mampe and thereafter to Hemca. The matter is still pending but it seems not capable of amicable

resolution despite the second respondent having prepared a draft order which Mampe and Hemca should have confirmed. Although the second respondent was a party to the said application, it withdrew its opposition of the matter. The application was converted to action proceedings.

- [20] The MEC of the Department of Public Works, Roads and Transport – North West (MEC) was joined as sixth respondent in case number 1026/11. The MEC delivered a counter application in which he sought the setting aside and declaring as invalid the agreement of sale dated 21 April 2009 between Mampe and the second respondent. Also directing the Registrar to cancel any transfer of the property to Mampe and to order the second respondent to repay any consideration received from Mampe pursuant to the said sale. That an interim interdict be granted prohibiting the further transfer of the property to any person or entity, other than the State, pending the outcome of the application under case 1026/11.
- [21] The caveat/interdict which Mampe seeks to remove is a result of the counter application by the MEC under case number 1026/11. The papers filed by the MEC under case 1026/11 show that there are serious legal issues on whether or not the second respondent was entitled to sell the property to Mampe, appropriateness of the purchase price and the position of Shell (sixth respondent) as lessee. The case under case number 1026/11 must be fully considered by the court in determining the issue of case M310/22.
- [22] The SIU has been investigating immovable property transactions between the second respondent and Mampe as early as 2018. It is appropriate that the Court take into account the outcome of the investigations by SIU prior

to making a ruling on this matter or the matter under case number 1026/11.

[23] It seems the property was sold by an official purporting to act on behalf of the second respondent in 2009. However, the second respondent cannot confirm this as Mampe does not attach the deed of sale. It is not known if Mampe has paid the purchase price as it has not attached proof of payment. It would not be appropriate to remove or uplift the caveat as the matter under case number 1026/11 is still pending and not resolved.

[24] The Registrar filed a supplementary affidavit. The supplementary affidavit seeks to ensure that the confirmatory affidavit by the SIU is filed as it was not attached to the original answering affidavit of the Registrar. The confirmatory affidavit by the SIU confirms the investigations done by the SIU. Nothing else.

Fifth respondent's case

[25] The fifth respondent (Hemca) states that on 21 April 2009, Mampe entered into a deed of sale over the property with second respondent. On 18 May 2009 Mampe on-sold the property to Hemca. Mampe was to take ownership of the property and immediately transfer same to the Hemca. On 20 June 2011 the Registrar refused to register the transfer stating that dealings revolving around the sale of the property were being investigated as it might have been disposed of by unauthorised persons. As result Mampe and Hemca launched a joint application under case 1026/11 to compel the Registrar to transfer the property. Other parties joined the case in opposition thereof. However, all the parties have since changed and are no longer opposing the application. Mampe has however adopted the

attitude that the property should be transferred to it alone and to the exclusion of Hemca.

- [26] Hemca has been operating a Shell fuel station from the property for the past 27 years. The property was first registered in the name of the Republic of Bophuthatswana under title deed T[...]. Ownership of the property now vests with the North West Provincial Government by virtue of s 239 of the Interim Constitution of the Republic of South Africa, 200 of 1993 read with item 28(1) of the Constitution of the Republic of South Africa, 108 of 1996.
- [27] It transpired that the Registrar refused to register the property due to the objection by the MEC for the Department of Co-operative Governance, Human Settlements and Traditional Affairs. A caveat was then registered against the property as a result of a court order dated 21 July 2011 under case 1026/11. The second respondent withdrew its opposition of the said application. The first, second and fourth respondents also withdrew their opposition of the said application. The MEC filed a notice to oppose and counter application. The second respondent filed a re-instatement of its opposition to the matter but subsequently withdrew same. Thereafter the matter was referred to trial on 3 October 2013.
- [28] Since then all disputes giving rise to the matter have been settled with the MEC for the Department of Cooperative Governance, Human Settlements and Traditional Affairs who is the successor to the MEC for Public Works, Roads and Transport in North West Province. The MEC consented to the transfer of the property to Mampe and thereafter to Hemca. To this effect a draft order was prepared by agreement between the parties.

- [29] Hemca cannot oppose all the relief sought by Mampe, albeit for different reasons than those proposed by Mampe. Hemca cannot raise a valid ground opposing transfer to Mampe, but with the proviso that upon transfer to Mampe, the property must forthwith be transferred to Hemca. In the absence of an agreement or an order of court allowing for transfer of the property to be effected firstly to Mampe and thereafter to Hemca, the condition precedent contained in the caveat/interdict will not be fulfilled and therefore the interdict should not be uplifted.

First respondent's case on fifth respondent's counter application

- [30] The first respondent delivered an answering affidavit to the Hemca's counter application that there is no agreement between the parties and that the first respondent still persists with its opposition of the matter. The draft order under case 1026/11 was not made an order of court and as such the Registrar cannot register transfer of the property. The caveat/interdict can only be uplifted upon finalisation of case 1026/11.

Applicant's reply

- [31] Mampe states that although the plea of *lis pendens* is valid, it does not constitute an absolute right to the discontinuance of the proceedings herein at this stage. The court has a discretion whether to stay or refuse to stay the proceedings. Both convenience and equity requires that the matter be heard and that the defence of *lis pendens* not be acceded to. Mampe has spent an amount of R 340 000, 00 buying the property from the second respondent. Should the special plea of *lis pendens* be granted, the applicant will suffer prejudice since it and the Hemca have not been able to agree to a purchase price since their deed of sale lapsed some 13 years ago. Mampe has withdrawn from case 1026/11.

Fifth respondent's reply to first respondent's affidavits

- [32] Hemca states that it finds the opposition of the matter by the Registrar to be of interest as she has no interest in the transfer of property. The Registrar was expected to have filed a notice to abide as is normally done. It set out the duties of the Registrar. A seller of property need not be the owner. The only requirement is that the seller must be able to effect transfer of the *merx*. At the time the deeds documents were lodged with Registrar, Mampe was indeed not the owner, but having regard to all documents lodged, it had a legitimate expectation to acquire ownership enabling it to give immediate transfer to Hemca. Hemca delivered a supplementary affidavit setting out the history of their involvement with the property since 1996 with an entity called Bodisatswana.

Sixth respondent's answering affidavit

- [33] The sixth respondent (Shell) filed an answering affidavit to deal only with costs. This is because the applicant had sought a special costs order as a result of the sixth respondent's failure to file its answering affidavit. At all material times the sixth respondent had been the lessee over the property which it sub-let to Hemca. The second respondent is a creature of statute and does not possess powers to dispose of provincial state land in terms of the Bophuthatswana Housing Corporations Act, 1982 as amended by the North West Housing Corporation Amendment Act of 1994. The sale of the property was not published in the Government Gazette and a newspaper circulating in the province of the proposed disposal as required in s 3(2) of the North West Land Administrative Act 4 of 2001.

- [34] The matter under case 1026/11 is still pending. The matter was opposed and referred to oral evidence. An interdict was granted under the said case number and is still in operation. The sixth respondent denies that the applicant acquired ownership as alleged or at all.

The court order of 21 July 2011 under case 1026/11

- [35] The court order by Kgoele J dated 21 July 2011 under case number 1026/11, which was granted by agreement between the parties, states as follows:

- (a) The third respondent has the right to file its answering affidavit within 15 days of date of this order.
- (b) A caveat/interdict is to be registered against the Title Deed (Certificate of Township Title Deed Number T[...]) of the property (Erf 1[...] Mmabatho Unit [...], situated in the Mafikeng Local Municipality, Registration Division J.Q.; North West Province in extent of 4137 (Four Thousand One Hundred and Thirty Seven) square meters in order to prevent any alienation (as defined in Section 1 of the Alienation of Land Act (Act 68 of 1981) of the property, pending finalisation of this application.
- (c) The application is postponed sine die.
- (d) Costs be and is hereby reserved.

Analysis, the authorities and reasons for judgment

- [36] It is common cause that the matter under case 1026/11 involved the same parties as before me, the same *lis* and relief sought. The said case was referred to oral evidence. The main question before I deal with the merits of the case, is *lis pendens*. Whether the case under 1026/11 is still pending or not, as some of the parties are of the view that the matter is still pending, while others are of the view that the issues under the said matter have been settled.

[37] In the case of ***Standard Bank of SA Ltd v Tsheola Dinare Tours and Transport Brokers (Pty) Ltd (22011/2021) [2022] ZAGPJHC 311 (6 May 2022)*** at par 14, Molahlehi J, as he then was, states as follows:

“(14) The three requirements for a successful reliance on the plea of *lis pendens* are

1. The litigation is between the same parties.
2. That the cause of action is the same; and
3. That the same relief is sought in both sets of proceedings”

[38] In the case of ***Nestle (South Africa) Pty Ltd v Mars Incorporated 2001 (4) SA 542 (SCA) (“Nestle SA”)*** Nugent AJA states as follows:

“[16] The defence of *lis alibi pendens* shares features in common with the defence of *res judicata* because they have a common underlying principle which is that there should be finality in litigation. Once a suit has been commenced before a tribunal that is competent to adjudicate upon it the suit must generally be brought to its conclusion before that tribunal and should not be replicated (*lis alibi pendens*). By the same token the suit will not be permitted to be revived once it has been brought to its proper conclusion (*res judicata*). The same suit, between the same parties, should be brought only once and finally. [17] There is room for the application of that principle only where the same dispute, between the same parties, is sought to be placed before the same tribunal (or two tribunals with equal competence to end the dispute authoritatively). In the absence of any of those elements there is no potential for a duplication of action.”

[39] The first, second, third and sixth respondents state that the matter under case 1026/11 is still pending. The applicant states that it withdrew from the said matter, however, it has not attached any documents or notice to show its withdrawal from the said case. The fifth respondent states that the issues under the said case have been settled. However, there is no

proof that there was settlement or finalisation of the said case. In the contrary, the applicant states at paragraphs 47 to 50 of its replying affidavit that the case is still pending. However, requests that given the balance of convenience and equity, this matter be proceeded with instead of granting the order for *lis pendens*.

[40] The fifth respondent states that all the parties have since changed and are no longer opposing the application under case 1026/11. It is not true that other parties are no longer opposing registration. There is proof that the first, second and third respondents withdrew their opposition of the application under case 1026/11 as per annexures AA7 and AA8 to fifth respondent answering affidavit. However, I have not yet seen the withdrawal by applicant (Mampe) from the said application. The fifth respondent has not withdrawn its application under the said case or at least no evidence has been placed before me to that effect in the form of notices of withdrawal. Therefore I cannot accept this submission. There is only a purported settlement agreement in the form of a draft order which has not been made an order of court, and to which the applicant seems to have resiled.

[41] Wallis J in ***Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others 2013 (6) SA 499 (SCA)*** (“Caesarstone”) at par 2, explained the doctrine of *lis pendens* as follows:

"[2] As its name indicates, a plea of *lis alibi pendens* is based on the proposition that the dispute (*lis*) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same

issue with the risk that they may reach differing conclusions. It is a plea that has been recognised by our courts for over 100 years.”

[42] The second respondent, from whom the applicant draws its powers as it purchased the property from second respondent, has withdrawn its opposition of the application and counter-application in case 1026/11. The draft order was never made an order of court and there is no indication that the matter was finalised. It remains pending. More so since one of the plaintiffs (Mampe/applicant) has indicated that it disputes the matter and has by implication resiled from the relief sought. That matter remains pending.

[43] The other problem is, if fifth respondent says the draft order settled the matter between the parties, why then should I make an order in the same terms as the draft order in another matter. This would cause a conflict of judgments or duplication of orders in the same dispute involving the same parties. The fifth respondent itself states, at paragraphs 5.3 to 5.8 of its answering affidavit, that the caveat/interdict cannot be uplifted in the absence of a court order or agreement between the parties. If there is no court order or agreement in case 1026/11, how then is it alleged that the issues in that matter have been settled or finalised.

[44] To add to the problem, if the issues have been settled under case 1026/11 why is there no plea of *res judicata*. The applicant, on its own version as per paragraphs 47 to 50 of its replying affidavit, has admitted *lis pendens* of case 1026/11. These are the issues espoused by the courts in the ***Nestle SA*** case and ***Caesarstone*** case *supra*.

[45] The first time the amount spent by the applicant in purchasing the property arose was in its replying affidavit. Whether the deed of sale between the applicant and fifth respondent has lapsed, is something to be determined in the main application under case 1026/11 or this case. Whichever proceeds at the end. Applicant states that it has withdrawn from case 1026/11 but does not attach any proof of notice to that effect. It is also clear that the sixth respondent (Shell) has lodged or raised a dispute of fact on the rights of the second respondent to acquire ownership and whether there was a valid deed of sale between the applicant and second respondent. These issues require proper ventilation and I cannot make such determination at this stage. Given these issues, this matter might in all likelihood have to be referred to oral evidence like the one under case 1026/11.

[46] In ***Loader v. Dursot Bros (Pty) Ltd*** (“**Loader**”) 1948 (3) SA 136 (T) at 139, in dealing with this aspect, Roper J said the following:

“It is clear on the authorities that a plea of *lis alibi pendens* does not have the effect of an absolute bar to the proceedings in which the defence is raised. The court intervenes to stay one or other of the proceedings, because it is *prima facie* vexatious to bring two actions in respect of the same subject matter. The court has a discretion which it will exercise in a proper case, but it is not bound to exercise it in every case in which a *lis alibi pendens* is proved to exist”.

[47] In as much as the discretion is that of the court, taking the balance of convenience and equity into consideration, and given the protracted history of this matter, I have difficulty in coming to the rescue of the applicant to exercise my discretion in hearing this matter. Firstly, the MEC (third respondent), who has filed a counterclaim in the 1026/11 case, has not properly responded to this matter. There is also allegations that the

Department has since changed. However, to what extent that affects the existence of the counterclaim and the pending matter, can best be ventilated in that case. I am mindful of the fact that some of the parties filed notices to oppose, withdrew same and filed again. This coupled with the unconfirmed draft order.

[48] Secondly, the applicant indicates that he has withdrawn from the case (1026/11) as a plaintiff, although it has made some concessions in the said case. Applicant has not provided any proof that it has withdrawn from the said case. The evidence in that case, as in this case, more so since the matter was referred to trial after initially being launched as application proceedings, shows that there is a likely dispute of facts which need to be properly canvassed. I am not told if discovery was done in those proceedings or not, only that the issues were settled as alleged by fifth respondent, whereas the first respondent and others state that the matter remains pending while the second respondent indicates, *in casu*, that the said matter should be adjudicated given the legal issues raised therein, more specifically the fact that it (second respondent) did not have capacity to sell the property as the property belonged to the MEC for the Department of Public Works, Roads and Transport. I find that case 1026/11 is still pending.

Costs

[49] Costs are a discretion of the court. Despite *lis pendens* being raised by some of the respondents, and its own admission that case 1026/11 is still pending, the applicant persisted in proceeding with the matter. None of the parties have placed evidence before me showing that the case 1026/11 has been finalised in one way or the other. The applicant has not attached any proof that it withdrew from case 1026/11. As such I can't accept its version on this aspect. Be that as it may, the applicant has not informed

me when it withdrew and why it withdrew from the said proceedings, having made certain concessions on affidavit in the said proceedings. I do not know whether the applicant withdrew before the draft order was presented by the other parties or not. I do not know why the draft order was not made an order of court, despite the second respondent and the MEC for Co-operative Governance, Human Settlements and Traditional Affairs, who is said to have taken over the MEC for Public Works, Roads and Transport having consented to the draft order. It is on these basis that costs should follow the suit.

Order

[50] I make an order as follows:

1. The point in limine of *lis pendens* is granted.
2. The application is stayed pending final determination of the matter under case 1026/11.
3. The applicant to pay costs on scale B, such costs to include those consequent upon the employment of two counsel.

J. T. MAODI
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
NORTH WEST DIVISION, MAHIKENG

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Date judgment reserved: 15 August 2025
Date of Judgment: 18 March 2026