REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2022-33975

(1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGES:
(3) REVISED:

10/03/2026
DATE

SIGNATURE

In the matter between:

GERTRUIDA MARIA VAN WYK Applicant

and

JAMES PETER VAN NIEKERK First Respondent

JOHANNES GEORGE MARTIN Second Respondent

REGISTRAR OF DEEDS, PRETORIA Third Respondent

JUDGMENT

THIS JUDGMENT IS HANDED DOWN REMOTELY AND WILL BE CIRCULATED TO THE PARTIES ELECTRONICALLY.

WELGEMOED, AJ

[1] This is an opposed application that was set down for hearing on the opposed motion roll for 24 November 2025 and heard on 27 November 2025, wherein I reserved judgment. The applicant sought the following relief:

"1. That the first and second respondents be directed to deliver the originally signed consent to cancel the caveat, 1-19480/20100, recorded against the property known as PORTION 843 (PORTION OF PORTION 64) OF THE FARM KAMEELDRIFT 298, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG, held under Deed of Transfer T[...] to the applicant's attorneys within 5 days from this order.

2. That the first respondent be directed to sign all such documents and do all things necessary required to give effect to the transfer of

PORTION 843 (PORTION OF PORTION 64) OF THE FARM KAMEELDRIFT 298, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG, held under Deed of Transfer T[...], failing which the sheriff of this Court is authorised to sign all such documents and do all things necessary required to effect transfer and registration of the property in the applicant's name.

3. *That the first and second respondents be ordered to pay the costs associated with the removal of the caveat, I-19480/2010C, recorded against the property known as PORTION 843 (PORTION OF PORTION 64) OF THE FARM KAMEELDRIFT 298, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG, held under Deed of Transfer T[...].*

4. *Alternatively to prayers 1 and 3, that the caveat, under reference number: I- 19480/2010C and recorded against the property known as PORTION 843 (PORTION OF PORTION 64) OF THE FARM KAMEELDRIFT 298, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG, held under Deed of Transfer T[...], be set aside and that the third respondent is ordered to remove the caveat recorded against the property.*

5. *That the first and second respondents be ordered to pay the costs of this application on an attorney and client scale."*

[2] The first and second respondents ("respondents'") oppose the relief sought and, in turn, advance a counter application in which they seek the following relief:

"1. The Applicant is ordered to vacate the following property after expiry of a period of 3 months following service of the Notice of Counter Application and supporting Affidavit on the Applicant:

Portion 843 (Portion of Portion 64) of the Farm Kameelddf 298 (Registration Division JR, Gauteng Province)

('the Property')

2. The Applicant shall vacate the Property:

a. by handing over the keys granting access to the Property to the First Respondent's attorney and by providing the First Respondent's attorney with such access code(s) as may be necessary; and thereafter

b. to enter the Property again only with the prior written permission of the First Respondent.

3. *Should the Applicant fail or refuse to vacate the property in the manner set out in paragraph 2 above, the Sheriff of the Honourable Court is authorized and ordered (at the costs of the Applicant) to replace the locks granting access to the Property.*

4. *It is declared that the principal debt secured by Mortgage Bond (No B[...]) dated 21 July 2006 over the Property ('the Mortgage Bond', had lapsed.*

5. *The Third Respondent is authorized and ordered to cancel the Mortgage Bond No. B[...] referred to in the preceding paragraph.*

6. *Costs of the Counter Application."*

BACKGROUND:

[3] The facts of the application are largely common cause between the parties and are set out hereunder.

[4] In October 2005, the applicant sold the property known as Portion 843 (Portion of Portion 64) of the Farm Kameeldrift 298, Registration Division JR, Province of Gauteng, ("the property") to the first and second respondents as co-purchasers in terms of a written sale agreement. The

property is zoned as agricultural land with consent use for a guesthouse and tea garden.

[5] The property was subsequently transferred and registered in the name of the first respondent in 2005 after the parties signed an addendum to remove the second respondent as a contracting party. A mortgage bond was also registered over the property as security for payment in favour of the applicant.

[6] The first respondent defaulted on his payment obligations and the parties cancelled the sale agreement by mutual written agreement, dated 21 April 2011 ("the 2011 agreement"). In terms of the 2011 agreement, the applicant became entitled to the re-registration of the property into her name forthwith. The 2011 agreement further records that an amount of R 1 851 693.77 was due and owing to the applicant as at 28 February 2011 by the first respondent in respect of the original purchase price, which amount the first respondent was unable to repay. Conseqeuntly, the 2011 agreement to re-register the property back into the name of the applicant. The Respondents also signed a power of attorney at this stage to effect transfer of the property back into the applicant's name.

[7] In paragraph 2.3 of the 2011 agreement, the first respondent undertook to sign all documents necessary to give effect to transfer and registration of the property back into the applicant's name. The first respondent is

refusing to comply with his obligations under the memorandum of agreement wherefore the applicant is seeking the necessary relief to compel compliance with this term.

[8] The first and second respondents concluded an antenuptial contract (the "anc") and entered into a civil union during or about 2008, out of community of property with the exclusion of the accrual. The applicant was not aware of this fact. In terms of the anc, the first respondent donated an undivided half share in the property to the second respondent. Subsequent to the first and second respondents’ civil union and the registration of their anc, the first and second respondents had a caveat recorded against the property in favour of the second respondent, which intended to give effect to the donation of the undivided half share in the property as it was recorded in the first and second respondents' anc. The caveat was recorded under reference number: I-19450/2010C.

[9] During August 2021, it came to the attention of the applicant that the caveat was recorded against the said property when the applicant’s attorneys attended to the re-registration and transfer of the property into the applicant’s name.

[10] On 20 August 2021 the applicant’s attorney of record requested the first and second respondents to undersign the consent to cancellation of the caveat.

[11] Shortly thereafter the first and second respondent signed the consent to cancellation of caveat and emailed a copy thereof to the applicant's attorneys' offices, without returning the original copy thereof, it appears to have been signed in August 2021.

[12] The respondents failed to provide the original signed document to the applicant. Instead, on 4 November 2021, the applicant's attorney received a letter from the respondent's attorney stating that the respondents had withdrawn and cancelled the signed consent to cancellation documents. The reason provided in the answering affidavit for signing the consent is because the respondents erroneously accepted that the caveat was invalid.

ISSUES TO BE DECIDED:

[13] The parties contend in the joint practice note that the following issues need to be decided:

Applicant aver that :-

13.1. The first respondent purchased Plot 64 from the applicant and undertook to pay the balance of the purchase price by means of monthly instalments.

13.2. The property was registered in the name of the first respondent, with a mortgage bond securing the debt in favour of the applicant.

13.3 The first respondent defaulted on making the agreed payments, and the parties entered into a further agreement in 2011, noting the first respondent's default and indebtedness.

13.4. The parties further agreed in terms of the 2011 agreement that the first respondent would transfer the property to the applicant in light of his default and indebtedness.

13.5. The first respondent now contends that the applicant's claim for the transfer of the property per the 2011 agreement constitutes an independent debt which has become prescribed, entitling the first respondent to an order evicting the applicant from the property.

Respondents aver that :-

13.6 The applicant became entitled to registration of Plot 64 into her name forthwith in terms of the agreement concluded on 21 April 2011.

13.7 The applicant now seeks specific performance in terms of the agreement more than a decade later and the first respondent contends that the applicant's right to have the property transferred into her name, had become prescribed.

13.8 The first respondent counterclaimed for the eviction of the Applicant from Plot 64 and because the principal debt was extinguished with the conclusion of the 2011 agreement, cancellation of a Mortgage Bond registered in favour of the applicant.

13.9 The Applicant opposes the Counter Application on the grounds that it was a tacit term of the Agreement that the Respondents would not in future rely on prescription. In the alternative, the Applicant contends that the running of prescription was not completed, alternatively was interrupted alternatively is not a “debt” as defined in the Prescription Act, Act 68 of 1969 (“the Prescription Act”).

[14] I will deal with the issues raised hereunder.

THE PRESCRIPTION ISSUE:

[15] It is clear from the above background that the applicant and respondents view the 2011 agreement as valid and binding. I agree with this contention.

[16] From 2011 to date, the applicant has been in occupation of the property and the respondents showed no interest in the property. In fact, the parties acted at all relevant times in accordance with the express provisions of the 2011 agreement and indicated to the outside world that the applicant is the owner of the property.

[17] In terms of this agreement, the first respondent had the intention to re-transfer the property to the applicant and was in law entitled to effect transfer of the property back to the applicant, as the first respondent was the owner of the property at that stage.

[18] The respondents contend however that the applicant's claim for the transfer of the property into her name, constitutes a “debt” as contemplated in Section 10(1) of the Prescription Act. The debt arose on 21 April 2011 which is more than 3 years prior to the date when the application was brought and, in the premises, the applicant's claim for transfer of the property into her name had become prescribed by virtue of the provisions of Section 11(d) of the Prescription Act in 2014.

[19] Under circumstances where the applicant's claim against the first respondent had become prescribed, she also no longer has *locus standi* to seek cancellation of the caveat registered against the property.

[20] The applicant argues that in terms of the 2011 agreement, the respondents relinquished their rights to the property. In essence, there is a tacit or implied term to the effect that, the applicant would not raise prescription as a defence to the re-registration of the property.

[21] Further, if the relief sought is indeed a “debt” as defined in the Prescription Act, that such a debt is still secured by a mortgage bond, which is registered over the property for any claim of any nature. Wherefore, the prescriptive period is 30 years.

[22] There is a further argument in terms of which the applicant contends that the “debt” was only due upon demand. After demand the respondent signed the document and cannot withdraw such consent.

[23] Starting with the last point. It is evident that the 2011 agreement expressly states that the first respondent is obliged to, on demand, sign all the necessary documents to effect transfer. Clause 2.3 of the 2011 reads:

“2.3 Van Nlekerk ondemeem om <u>op aanvraag</u> alle nodige dokumentasie te onderteken by voormelde oordragprokureurs ten einde oordrag van die onroerends eiendom in die naam van Van Wyk ts bewerkstellig.”

[24] In this respect I am of the view, the debt only became due in 2021, when demand was made and did not prescribe in the circumstances.

[25] Secondly, the objective facts of this matter show that there is merit in the contention of the applicant that the respondent tacitly agreed to the liability, namely the re-registration of the property in the applicant’s name for the following reasons, even after 2014.

[26] Section 14 of the Prescription Act, provides as follows:

“*<u>14</u> Interruption of prescription by acknowledgement of liability*

<u>(1)</u> The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor.

<u>(2)</u> If the running of prescription is interrupted as contemplated in subsection (1), prescription shall commence to run afresh from the day on which the interruption takes place or, if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt from the date upon which the debt again becomes due.”

[27] The relevant test in determining whether there was a tacit acknowledgment of liability as set out in ***Investec Bank Ltd v Erf 436 Elandspoort (Pty) Ltd And Others 2021 (1) SA 28 (SCA),*** where the SCA indicated the following:

"[29] Cape Town Municipality v Allie NO concerned whether the Cape Town Municipality had acknowledged liability and so had interrupted prescription in terms of s 14 of the Act in relation to Ms Allie's claim. In dealing with s 14(1) of the Act, Marais AJ identified what he described as a number of self-evident aspects of the section. They were:

'Firstly, I do not think the acknowledgment of liability need amount to a fresh undertaking to discharge the debt. "I admit I owe you R100" is manifestly an acknowledgment of a liability to pay R100 but it is not a fresh or new undertaking to pay it…

*Secondly, full weight must be given to the Legislature's use of the word "tacit" in s 14(1) of the Act. In other words, one must have regard not only to the debtor's words, **but also to his conduct**, in one's quest for an acknowledgment of liability. That, in turn, opens the door to various possibilities. One may have a case in which the act of the debtor which is said to be an acknowledgment of liability, is plain and unambiguous. His prior conduct would then be academic. On the other hand, one may have a case where the particular act or conduct which is said to be an acknowledgment of liability is not as plain and unambiguous. In that event, **I see no reason why it should be regarded in vacuo** and without taking into account the conduct of the debtor which preceded it. If the preceding conduct throws light upon the interpretation which should be accorded to the later act or conduct which is said to be an acknowledgment of liability, it would be wrong to insist upon the later act* *or conduct being viewed in isolation. In the end, of course, one must also be able to say when the acknowledgment of liability was made, for otherwise it would not be possible to say from what day prescription commenced to run afresh…*

Thirdly, the test is objective. What did the debtor's conduct convey outwardly? *I think that this must be so because the concept of a tacit acknowledgment of liability is irreconcilable with the debtor being permitted to negate or nullify the impression which his outward conduct conveyed, by claiming ex post facto to have had a subjective intent which is at odds with his outward conduct.*

…

Fourthly, while silence or mere passivity on the part of the debtor will not ordinarily amount to an acknowledgment of liability, this will not always be so. If the circumstances create a duty to speak and the debtor remains silent, I think that a tacit acknowledgment of liability may rightly be said to arise…"

[28] The actions of the first respondent aforesaid, in context, objectively amounts to a continuous express (alternatively a tacit) acknowledgement of the existing liability on the part of the first respondent to sign all the documents necessary in order to re-register the property in the applicant's name. This conduct only seized in 2021, when the first respondent refused to provide the original cancellation document for the caveat.

[29] In addition to the above, the Deeds Registry system is a negative system and registration does not guarantee title; and if ownership did not legally

pass, the register can be corrected to reflect the true owner. See ***Nedbank Limited v Mendelow NO*** **(686/12) [2013] ZASCA 98** at para 12**.**

[30] There is further much to be said that the relief that the applicant is seeking is not a "debt" as defined in the Prescription Act. In this respect, the Constitutional Court in ***Makate v Vodacom (Pty) Ltd*** **(CCT52/15) [2016] ZACC 13** held that the term "debt" as used in the Prescription Act, in light of our Constitution should be given a narrow meaning:

"[91] In Road Accident Fund,[62] this Court, having expressed reservations on whether an obligation may constitute a debt contemplated in the Prescription Act, stated that the failure to meet a prescription deadline set in terms of the Act, denies a litigant access to a court. What this means is that if the Act finds application in a particular case, it must be construed in accordance with section 39(2). On this approach an interpretation of debt which must be preferred, is the one that is least intrusive on the right of access to courts

[92] However, in present circumstances it is not necessary to determine the exact meaning of "debt" as envisaged in section 10. This is because the claim we are concerned with falls beyond the scope of the word as determined in cases like Escom which held that a debt is an obligation to pay money, deliver goods, or render services. Here the applicant did not ask to enforce any of these obligations. Instead, he requested an order forcing Vodacom to commence negotiations with him for determining compensation for the profitable use of his idea."

[31] Applying the narrow definition of the word “debt” this court would be inclined to find that the relief sought by the applicant, namely the signing of a document by the first respondent is not a debt, under the present circumstances. The failure to sign the necessary documents is rather a case of a continuing wrong, although it arises from a single act in the past, where there can be no question of prescription. As was stated in ***Makate v Vodacom (Pty) Ltd*** **(CCT52/15) [2016] ZACC 13** at para 192:

> *“[192] In the case of a continuing wrong there can be no question of prescription even though the wrong arises from a single act long in the past. The reason, which may appear somewhat artificial, but which is well established, is said to be that while the original wrongful act may have occurred at a past time the wrong itself continues for so long as it is not abated.”*

[32] In light of the above findings, it is not necessary to finally determine this point.

[33] Accordingly, the applicant’s claim ought to succeed, and the respondents counter application ought to fail. Costs to follow the event, inclusive of costs on scale C as both parties employed senior counsel and the matter, in my view, was sufficiently complex enough to justify the employment of senior counsel.

ORDER:

[34] Consequently, I make the following order:

1. The first and second respondents be directed to deliver the originally signed consent to cancel the caveat, 1-19480/20100, recorded against the property known as PORTION 843 (PORTION OF PORTION 64) OF THE FARM KAMEELDRIFT 298, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG, held under Deed of Transfer T[...] to the applicant's attorneys within 5 days from this order.

2. The first respondent be directed to sign all such documents and do all things necessary required to give effect to the transfer of PORTION 843 (PORTION OF PORTION 64) OF THE FARM KAMEELDRIFT 298, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG, held under Deed of Transfer T[...], failing which the sheriff of this Court is authorised to sign all such documents and do all things necessafy required to effect transfer and registration of the property in the applicant's name.

3. The first and second respondents be ordered to pay the costs associated with the removal of the caveat, I-19480/2010C, recorded against the property known as PORTION 843 (PORTION OF

PORTION 64) OF THE FARM KAMEELDRIFT 298, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG, held under Deed of Transfer T[...]. 4.

4. The counter application of the first and second respondents is dismissed.

5. The first and second respondents are ordered to pay the costs of this application and the counter application on Scale C;

WELGEMOED CJ

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA GAUTENG

DIVISION, PRETORIA

Date of Hearing: 27.11.2025

Date of Judgment: 10.03.2026

Counsel for Applicant: Adv J Van Den Berg SC

Counsel for Respondents: Adv BC Stoop SC