



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE: 1264/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE 06 March 2026

SIGNATURE

In the matter between:

CEBISILE R. MAMBWE

1ST APPLICANT

(Identity Number: 7[...])

ASTON MAMBWE

2ND APPLICANT

(Identity Number: Z[...] 3[...])

And

ANNEMARIE SWANEPOEL ATTORNEYS INC.

1ST RESPONDENT

WALTER AND STANDER ATTORNEYS

2ND RESPONDENT

SUMMER BREEZE HOMEOWNERS ASSOCIATION

3RD RESPONDENT

(Registration Number: 2005/022890)

PETER JOHN GIBSON

4TH RESPONDENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 06 March 2026 at 10h00.

JUDGMENT

MANGENA AJ:

[1] Applicants were the registered owners of an immovable property, namely, Portion 514(A portion of Portion 502) of the Farm white River 64 JU Province of Mpumalanga. By virtue of their ownership of the property, they became members of Summer Breeze Homeowners Association ("HOA").

[2] They concluded a deed of sale for the transfer of the property and appointed Annemarie Swanepoel Attorneys Inc (transferring attorney) to attend to the transfer and registration of the property into the names of the purchasers.

[3] In order to pass transfer, the transferring attorney had to obtain both a rates clearance certificate as well as the homeowners association certificate confirming that there are no charges or levies due and owing on the property.

[4] I interpose to mention that at the time of the conclusion of the deed of sale, applicants were involved in a dispute with the Homeowners Association regarding the outstanding amount for levies. The HOA had obtained judgment in the magistrate court and there was a pending review in the High Court to have the proceedings set aside. In this regard, an email was sent to the transferring attorney wherein the applicants stated through their

attorney that "the statement presented by Summer Breeze estate is in its current computation disputed. You cannot therefore proceed to pay as per the statement presented to you when there is a pending review". Several correspondences were exchanged between the parties in an attempt to facilitate the resolution of the issue around the clearance certificate by the HOA. On 25 October 2024, first respondent enquired from the applicants if the dispute with Summer Breeze has been resolved and reminded them of their contractual obligations in terms of clause 4.3 and 4.5 of the sale agreement. On 06 November 2024, another letter was sent to the applicants' attorney wherein it was indicated that if applicants are unwilling or unable to settle the amounts due in respect of the HOA and municipal figures, guarantees will be issued and later deducted from the proceeds of sale.

[5] The transferring attorney duly requested the clearance figures from the HOA and upon receipt thereof requested the bond attorneys who were attending to the simultaneous registration of the bond to issue guarantees in favour of the homeowners' association. I may just mention for completeness that first respondent was also the bond registration attorney. Nothing really turns on this. Upon receipt of the guarantees that payment will be made, the association issued a clearance certificate confirming that there are no levies owing or that an arrangement has been made for their payment. The guarantees in respect of the levies for HOA were to pay directly into the account of the second respondent.

[6] Upon registration of transfer of property on 19 December 2024, the guarantees paid directly into the account of the attorneys for Summer Breeze Homeowners Association (Walter and Stander Attorneys who are cited as the second respondent) for the credit of the account of the applicants.

[7] The first respondent in her capacity as the transferring attorney reported to the applicants and furnished them with a statement of account. In the email accompanying the statement, the transferring attorney requested applicants to confirm if they agree with the statement and should they not agree, to kindly contact or reply to the email with queries. It was also recorded that payment will not be effected without having received confirmation from the applicants that they agree with the statement.

[8] Applicants replied to the email under cover of the letter from the attorney wherein they indicated their approval on all other items except that of Summer Breeze Homeowners Association in the amount of R 1 445 390.48 as they are disputing the debt. They say in the affidavit that " In essence, we advised the conveyancer to keep the money with her until the hearing of the review application on the 21 of January 2025". The response by the attorney was based on an erroneous understanding of how guarantees work. The guarantees in this instance paid directly into the second respondent and there were no funds held by the first respondent in respect of the levies due and payable by the applicants to Summer Breeze.

[9] The transferring attorney informed them that the bank had paid directly to Walters and Stander Attorneys, who were the attorneys for Summer Breeze Homeowners Association.

[10] The applicants are aggrieved by this turn of events. They argue that this was done contrary to their instructions and have approached this court for declaratory orders to the effect that the conducts of both the first and second respondents are invalid and should be set aside. They also seek an order that they are the lawful owners of the amount of R 1 445 390.48 as well as a consequential order compelling the third and fourth respondents

to transfer the amount plus interest accrued from the date of transfer into their attorneys trust account within 24 hours from the date of the court order.

[11] The application is opposed by all the respondents. The first respondent states in opposition of the relief sought against her that she was mandated to effect transfer and is not involved in the dispute between applicants and the Homeowners Association. She says that she was given a power of attorney which authorised her to do whatever was necessary to pass transfer into the names of the purchaser as the applicants were in law obliged to pass transfer upon the purchaser fulfilling his/her obligations in terms of the deed of sale. Applicants have further authorised her to pay out of the proceeds of sale *"all rates, levies and other charges owing to any local authority or other relevant authority or body corporate up to the date of registration of transfer as advised by such local authority or body corporate."* The document states further that *"should she be required to effect payment of any such amounts prior to registration of transfer, we agree to pay such amounts to you upon request for payment by you"*.

[12] There was a flurry of e-mails and letters exchanged between the office of the first respondent as the transferring attorneys and applicant's attorneys and throughout she maintained her position that she does not want to get involved in the dispute regarding the outstanding levies due to Summer Breeze. She offered to assist in an independent capacity and retain the disputed amount in trust pending finalisation of the litigation proceedings. For this to happen, parties were required to enter into a formal agreement and if no agreement was reached, she will have no choice but proceed with the guarantee as per the Association's statement provided to her. She records that her position was that applicants were obliged to pay the levies in order for transfer to take place as there was no condition that the review application were to be heard first before transfer could take place. When her letters and emails were not responded to, she proceeded to ask the bank

to issue guarantees in favour of Summer Breeze or attorneys so that a clearance certificate can be issued. Closer to lodgement she sent an email to applicants' attorneys advising of progress and how the proceeds of sale will be dealt with. Tellingly, prior to registration she informed the applicants that the matter has been lodged and the transaction will register in 2 to 3 weeks' time. No objection was raised and her mandate remained in tact.

[13] The second to fourth respondents oppose the application and have raised 2 preliminary points namely, misjoinder and *lis pendens*. The *lis pendens* may have fallen by the wayside as the urgent application has been withdrawn. The deponent to the affidavit is Mr Gibson who describes himself as the director of the third respondent, Summer Breeze Homeowners Association and duly authorised to depose to the affidavit. He takes issue with his citation in his personal capacity and argues that there is no legal basis for his involvement in this dispute as no relief is sought against him in his personal capacity. He says that he has no direct and substantial interest in this litigation and relies on the provisions of Section 19 (2) of the Companies Act 71 of 2008 to support his argument that he is wrongly cited. He is right and this point should not detain us longer than is necessary. It is upheld.

[14] He also says that there is no legal basis upon which the attorneys for Summer Breeze should be involved in these proceedings and once again contends that they also do not have any legal interest which is direct or substantial arising out of any order this court will grant. The applicants require declaratory orders regarding the funds paid and essentially needs to be refunded an amount paid by the bond attorneys to Summer Breeze. Accordingly, the inclusion of the second respondent constitutes a misjoinder. I agree. The point in *limine* of misjoinder regarding the second respondent is upheld.

[15] On the merits, the respondents argue that applicants sold their immovable property and were in law obliged to pay the levies and other charges owed to the homeowners' association before a clearance certificate could be issued. Applicants were duly notified through their attorney that guarantees will be issued in favour of Summer Breeze in respect of the levies and no objection was registered by them or their attorney. It is contended on behalf of the second respondent that it had no obligation to keep the funds upon receipt from the bond attorneys. There is accordingly no merit in the application, and it should be dismissed with costs on a punitive scale

[16] Applicants seek declaratory orders against the first and second respondents. Declaratory orders are regulated by section 21(1)(c) of the Superior Courts Act 10 of 2013. To succeed applicants must satisfy the court that they have an interest in an existing, future or contingent right or obligation and once the court is satisfied of the existence of the right, it should exercise its discretion either to refuse or grant the order sought. See *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd, 2005 (6) SA 205 (SCA)* at para 17 and 18.

[17] The applicants in this case have a dispute with Summer Breeze regarding the total amount due and owing in respect of the outstanding levies. They clearly do not have any right existing, future or contingent against the first and second respondents. On their own version the applicants have authorised the first respondent to process the transfer of property and undertook liability for payment of all outstanding levies due to the HOA and the municipality. They were notified of the total amount required by the HOA and all attempts to resolve this dispute failed. Nonetheless they kept their mandate to the first respondent and never revoked it even when they were informed that guarantees have been issued and will pay directly to the second respondent. It is also noteworthy that the

guarantees were payable to the second respondent and not the transferring attorney as this signify that there is no claim to be made against her for the repayment of the funds.

[18] With regard to the second respondent, applicants have no right whatsoever to claim anything against her. The second respondent was merely a collecting agent for the funds required for the issuance of the clearance certificate. They owed no obligation to the applicants in relation to the received funds and have accounted to their client, Summer Breeze, in respect of same.

[19] As stated earlier, the dispute is between the applicants and Summer Breeze HOA. The prayers to declare the conduct of the first and second respondents invalid is ill-conceived, and no case has been made for it.

[20] Regarding the third respondent which is Summer Breeze HOA, applicants request an order that the funds paid by the purchasers be paid into their attorney's trust account. The basis upon which this request is made is startling when considered against the fact that they do not dispute their liability to the HOA, but the total and actual amount owed. So, once liability is admitted, there can be no basis upon which the funds should be paid into their attorney's trust account. The HOA issued the clearance certificate on the basis that the disputed amount will be paid to them in line with the guarantees provided by the applicants' own conveyancer. To the extent that applicants believe that they have overpaid the HOA, they should present proof of payment in respect of the acknowledged amount and how it was arrived at. This is called debatement of the account. They failed to do so and there is no legally justifiable basis upon which this court should order Summer Breeze to pay over the funds to the applicants' attorneys.

[21] In the circumstances, the application fails and the following order is made:

21.1 The application is dismissed;

21.2 Applicants are ordered to pay respondents costs on a party and party scale B of the High Court tariffs.

M

I

MANGENA

**ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA**

APPEARANCES:

Attorney for the Applicants:

Lukhele Z Attorneys

Office No. 141 First Floor

32 Bell Street,

Caltex Building

MBOMBELA

Cell: 079 271 9687

E-mail: lukhelezattorneys@gmail.com

Ref.: CAM/CIV/024

Attorney for the First Respondent:

Savage Jooste & Adams Inc.

King's Gate

5 10 Street

PRETORIA

Tel.: 012 452 8200

C/O Annemarie Swanepoel Attorneys Inc

Cnr. Russel & Nel Street, Ground Floor

MBOMBELA

Ref.: Neethling

E-Mail: mariuss@savage.co.za;

alet@swanepoel.co.za

Counsel for the First Respondent:

Advocate JS Griessel

Tel: 0124528764

Cell: 0829204743

Email: kgriessel@law.co.za

Attorney for the Second to Fourth Respondents: M. Nienaber (Mrs.)

25 Roodt Street

MBOMBELA

Tel.: 013 518 0216

Cell: 072 203 9494

E-Mail: monique@waltersstander.co.za

carmen@waltersstander.co.za

Date of Hearing: 05 March 2026

Date of delivery: 06 March 2026