IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

CASE: 1267/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE 10 March 2026

SIGNATURE

In the matter between:

JOHANNES STEFANUS DU TOIT N.O. **(ID. NO.: 6[...])** **[in his capacity as a trustee of the** **Pomegranate Trust (IT000327/2016]**	**FIRST APPLICANT**
ROUVAUN HEYNS N.O. **(ID. NO.: 7[...])** **[in his capacity as a trustee of the** **Pomegranate Trust (IT000327/2016]**	**SECOND APPLICANT**

And

RAMCJE BELEGGINGS CC	**FIRST RESPONDENT**

(REG. NO.: 1989/009021/23)

NEDBANK LIMITED (REG. NO.: 1951/000009/06) **SECOND RESPONDENT**

THE REGISTRAR OF DEEDS, MPUMALANGA, MBOMBELA **THIRD RESPONDENT**

DIEDERIK JOHANNES BISSETT **FOURTH RESPONDENT**
(ID. NO.: 5[...])

JURGENS JOHANNES PETRUS LUBBE **FIFTH RESPONDENT**
(ID. NO.: 7[...])

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 10 March 2026 at 16h00.

JUDGMENT

MANGENA AJ:

[1] This is an application for an order compelling and directing the First Respondent to register a mortgage bond over the following properties, namely Remaining Extent of Portion 3 of the Farm Edna 10 held by Deed of Transfer T27812/1989 and Portion 5 (A portion of Portion 3) of the Farm Edna 10 held by Deed of Transfer T 227812/1989 in favour of the applicant, Pomegranate Trust.

[2] The underlying agreement for the mortgage bond is a loan agreement concluded on the 13 February 2017 in Mashishing between the trust and the first respondent. The material terms of the agreement are that the trust will advance payment of R3000 000.00

to the first respondent against registration of a mortgage bond over the above-mentioned properties as security for the loan advanced.

[3] The applicant avers that it performed in terms of the agreement and is accordingly entitled to the enforcement of the agreement by requiring the first respondent to honour its contractual obligations by executing a mortgage bond over the properties.

[4] The first, fourth and fifth respondents oppose the application on various grounds. It was argued that the transaction upon which the claim is based is a simulated transaction and therefore not legally enforceable. It was further submitted on their behalf that Mr Du Toit who deposed to the affidavit is in actual fact the person who advanced the funds to the respondent and not the trust. To this end, Mr Lubbe who deposed to the opposing affidavit said that Du Toit paid the money from the proceeds of the estate of his late wife. It was contended that the estate of the late wife should be joined to the proceedings. It was, however, not clear to me what the legal interest of the estate is in this matter. The point in limine on non-joinder is dismissed

[5] In support of the argument that the transaction is simulated, it was submitted that Du Toit is a member of the CC and his interests are held by another member. I was implored to scrutinise the relationship of the role players carefully before arriving at the decision to grant the relief sought.

[6] It was further submitted that there are liquidation proceedings pending against the entity which are likely to affect the outcome of this case. It was urged on me to see this application for what it is, namely an attempt to circumvent the liquidation proceedings

and defeat a prescription claim which will be successfully raised against any claim for monetary payment.

[7] There is simply no merit on any of the points raised. What is clear is that the parties have concluded a legally binding agreement which required the respondent to register a mortgage bond over the properties as security for the loan received. The agreement is intact and there are no proceedings to set it aside nor has any of the respondents advanced a cogent argument why it should not be enforced as valid and binding upon the parties.

[8] For a start, no evidence was adduced by the respondents to support their version that the transaction is simulated and disguised to appear real and genuine. On the papers filed, the entity was experiencing financial difficulties and in need of capital to support its business projects. Discussions were held to find money including approaching financial institutions. Du Toit agreed to advance payment of R 3000 000.00 to be paid with interest. As security for the loan, the first respondent agreed to register a mortgage bond.

[9] It is established that for a court to declare a transaction a simulated one, it does not have to look at any particular legislation but has to look on the facts of the particular case.

[10] In *CSARS v NWK* 2011 (2) SA 67 (SCA) the test was stated as follows:

> *"[55] In my view the test to determine simulation cannot simply be whether there is an intention to give effect to a contract in accordance with its terms. Invariably where parties structure a transaction to achieve an objective other than the one ostensibly*

> *achieved they will intend to give effect to the transaction on the terms agreed. The test should thus go further, and require an examination of the commercial sense of the transaction: of its real substance and purpose. If the purpose of the transaction is only to achieve an object that allows the evasion of tax, or of a peremptory law, then it will be regarded as simulated. And the mere fact that parties do perform in terms of the contract does not show that it is not simulated: the charade of performance is generally meant to give credence to their simulation". At para 55.*

[11] On the facts as they appear to me, there was nothing dishonest or disguised about this transaction. A disguised transaction was defined in Commission of Customs and *Excise v Randles, Brothers & Hudson Ltd*, 1941 AD 369 as the one concluded with an intended purpose to conceal the real agreement or transaction between the parties. The parties wish to hide the fact that their real agreement or transaction falls within the prohibition or is subject to tax, and so they dress it up in a guise which conveys the impression that it is outside of the prohibition or not subject to tax. Such a transaction is said to be in fraudem legis and is interpreted by the courts in accordance with what is found to be the real agreement between the parties. See *Roshcon (Pty) Limited v Anchor Auto Body Builders CC and Others, 2014 (4) SA 319 (SCA)* at para 10. The respondent did not adduce any evidence to support the averment that the transaction was disguised and or dishonest. There was not even a slight motive suggested for the contended disguise.

[12] As a further string to the bow, the respondents argued stridently that the matter has prescribed in that a period of 3 years had lapsed since the agreement was concluded in 2017. Once again it is clear that not much thought was given to this defence because the respondents have through their attorneys acknowledged their indebtedness to the applicant and agreed to the registration of the bond subject to certain conditions. They

have also offered to settle the loan in instalments. All of this had an effect that the running of prescription was interrupted, and the first respondent remains obliged to register a mortgage bond in favour of the applicant over the two properties. The plea of prescription fails.

[13] The applicant is entitled to the costs and accordingly the first and fifth respondents should be liable for them.

[14] Consequently, the application succeeds and the following orders are made:

14.1 The First Respondent is ordered and directed to register a mortgage bond in favour of the Promegranate Trust, IT 327/ 2016 over the following properties, namely Remaining Extent of Portion 3 of the Farm Edna 10, Registration Division, JU, Province of Mpumalanga held by Deed of Transfer T27812/1989 and Portion 5 (A portion of portion 3) of the Farm Edna 10 , Registration Division JU, Province of Mpumalanga, held by Deed of Transfer T227812/1989.

14.2 In the event that the first respondent and or its authorised members, fail to sign all the requisite documentation to give effect to prayer 1 above, within 10 days of being requested to do so by a duly designated Conveyancer appointed by the applicant, the sheriff of this Honourable Court or his/ her designate , or deputy , is hereby authorised to sign all the requisite documentation to give effect to order 1 above.

14.3. The first and fifth respondents are ordered to pay the applicant's costs on a party and party scale B of the high court tariffs.

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M I MANGENA

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

APPEARANCES:

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