IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CIRCUIT LOCAL DIVISION, GEORGE

JUDGMENT

Case Number: 318/2025

In the matter between:

LINDA JOUBERT **APPLICANT**

(ID NO.: 7[...])

And

SIDETRACK INVESTRA 8 (PTY) LTD **FIRST RESPONDENT**

(REG NO.: 2008/018666/07)

GEZINA SUSANNA BRITTZ N.O. **SECOND RESPONDENT**

(ID NO.: 8[...])

And

SPEARHEAD SALES (PTY) LTD **INTERVENING PARTY**

(REG NO.: 2016/465449/07)

Neutral citation: Linda Joubert v Sidetrack Investra 8 (Pty)(Ltd & Others (Case no 16845/18) [2026] ZAWCHC ___ (27/03/2026)

Coram: GOLIATH, DJP

Heard: 03 February 2026

Delivered: 27 March 2026

ORDER

---

1. The application is dismissed with costs.

JUDGMENT DELIVERED ELECTRONICALLY ON 27 MARCH 2026

<u>GOLIATH, DJP</u>

[1] In this application the applicant, as the purchaser, seeks an order for specific performance against the respondents to comply with the terms of a purchase agreement entered into by the parties in respect of immovable property known as portion 40 (A portion of Portion 4) of the farm Moordkuyl 38, Western Cape. Applicant seeks an order directing the Sheriff of Mossel Bay to undersign all the necessary transfer documents on behalf of the respondents in order to give effect to the transfer of the immovable property in question, as the respondents have refused to sign same.

[2] On 30 April 2025 the applicant and first respondent entered into a written agreement of sale in respect of the property. The three-page agreement is headed "OFFER TO PURCHASE" and provides as follows:

> "[1] Option
>
> The seller hereby grants an option to the Purchasers to purchase the

mentioned property from Sidetrack Investra 8 (Pty) Ltd (Reg 2008/018666/07).

[2] Option period

The option is granted for a period ending 30 May 2025.

The option must be exercised in writing by the Purchasers to the Seller by email before expiry of the option period.

By exercising of the option, a Deed of Sale will come into effect between the Parties on the terms and conditions as set out below.

[6] Renting

The Purchaser agrees to the Seller's request to rent a 1.2-ha piece.

The Purchaser accepts the current rates for water and electricity supply to the 1.2-ha piece, with the seller bearing all costs to ensure sufficient delivery."

[3] The purchase price of the property is the sum of R3 million, and the offer was subject to the approval of a mortgage bond. At the time of signing the agreement, the applicant was already occupying the property and operating a rehabilitation centre on the premises. It is common cause that in terms of the of the agreement first respondent granted the applicant an option to purchase the property from the first respondent, which option had to be exercised on or before 30 May 2025.

[4] On 12 May 2025 applicant obtained a bond from Absa Bank. However, on 7 May 2025, when the bond was conditionally approved by Absa Bank, applicant

addressed an email to respondent following an incident which had occurred on the property on 27 April 2025. A firearm was discharged by Mr Britz, and on 4 May 2025 Mr Britz confronted one of the managers at the rehabilitation centre and accused him of making a noise on the property.

[5] On 7 May 2025 the applicant, through Mr Lukas Swart addressed an email to Mr Britz and informed respondents as follows:

5.1. The proposal that the subdivision of 1.2 hectares identified for rental by the seller to be retained by the seller for personal development and business activities, is no longer acceptable and will <u>not form part of the final agreement.</u>

5.2. Directed that all tenants on the property vacate the premises at the sellers' costs prior to registration of transfer.

5.3. That applicant issued an instruction to their conveyancer to proceed with the transfer once written confirmation is received from and an agreement is reached that:

5.3.1. The full 8.5653 hectares will be transferred with no subdivision or right of retention by the seller.

5.3.2. the property must be fully vacated by all tenants.

5.3.3. there will be no future claim, right of access, residence or occupation retained by the seller or Sidetrack Investra 8 (Pty) Ltd after transfer.

[6] Applicant attributed these demands to the repeated unpleasant incidents, aggressive behaviour and alcohol abuse, including the altercation with the manager of the rehabilitation centre. The applicant averred that the letter addressed to the respondents on 7 May 2025 was not an attempt to amend the terms of the agreement but merely a proposal or suggestion to avoid the continued occupation of the property by second respondent (Mr Britz) on the premises since the rehabilitation centre promotes sober habits which did not align with the conduct of Mr Britz.

[7] Applicant submitted further that the correspondence of 7 May 2025 was between parties who were not signatories to the agreement namely Mr Britz and Mr Swarts. Furthermore, Mr Britz is not a director of first respondent and had no authority to act on their behalf. Resultantly, the agreement entered into between the parties were not adversely affected by the email and the terms of the agreement remained intact.

[8] Significantly, in the letter the applicant expressed the view that the "*revised offer is fair and reflects the challenges currently faced on the property*". The email ended by informing respondents if they agree to these conditions, the legal representative will be instructed to proceed with the transfer process immediately. Following the proposal to revise the terms of the agreement, the parties engaged each other and ultimately failed to find common ground.

[9] It appears that following further negotiations an offer was made to increase the purchase price to R3.8 million, but no written agreement was entered into. Subsequently, applicant expressed her intention to proceed with the transfer and

instructed the conveyancer to proceed with the drafting of transfer documents. A letter of demand was sent to the respondents demanding that they sign the transfer documents by 10 June 2025. Respondents refused to sign the documents.

[10] Respondents conceded that an agreement was entered into between the parties, in terms whereof the applicant was granted an option to purchase the property. The option had to be exercised by 30 May 2025. Respondents stated that applicant had failed to exercise the option clearly and unconditionally in accordance with the original option agreement.

[11] Respondents submitted that the email dated 7 May 2025 sought to "renegotiate" the terms of the option agreement by inter alia removing the lease back of the 1.2-hectare portion to the first respondent from the option agreement. Respondents noted that the applicant's attempt to alter a fundamental term in the agreement, amounted to a counteroffer, which by its nature, is not an exercise of the option. Respondents further argued that the applicant had failed to exercise the option in writing on or before 30 May 2025 and as a result the option agreement lapsed. Consequently, no valid and enforceable agreement for the sale and transfer of the property, on the original terms, came into existence between the parties.

[12] Applicant denied that she had revised the terms of the agreement since no amendments were agreed upon in writing. Applicant further stated that she did not refuse to honour the provisions of the agreement regarding the lease portion of the property to the first respondent. The applicant contended that she had complied with all the terms of the agreement and first respondent has no valid legal basis to refuse

to give effect to the agreement and effect transfer of the property to applicant.

[13] Following the impasse arising from the email dated 7 May 2025, first respondent sold the property to a third party, Spearhead Sales (Pty) Ltd ('Spearhead"). On 21 May 2025, first respondent accepted an offer to purchase the property from Spearhead for the sum of R4.4 million. The Court reluctantly granted Spearhead leave to intervene, subject to no costs order being granted in the application for leave to intervene. Spearhead essentially made common cause with the submissions of the respondents and argued that the applicant had failed to exercise the option in writing as prescribed in the agreement. It was contended that Spearhead lawfully purchased the property from respondents after the option period had expired.

[14] I am in agreement with the respondents' contention that essential terms and conditions of the agreement were vague, confusing and open to different interpretations, more particularly the clause relating to the renting of 1.2 hectares which became a central feature in the renegotiations. Notwithstanding the vague and confusing nature of the agreement, the provisions regarding an option which had to be exercised by 30 May 2025 by giving notice in writing, are clearly and unequivocally provided for in the agreement.

[15] The court is required to apply the principles of the interpretation of documents as outlined in **Natal Joint Municipal Pension Fund v Endumeni Municipality**[1] since the process of interpretation is a unitary and objective exercise that have due regard to the text, context and purpose of the document or instruments being

---

[1] 2012 (4) SA 593 (SCA) at para 18

interpreted. Having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence, I am satisfied that there is nothing inconsistent or ambiguous in the provisions of clause 2. This provision is crucial in the determination of this matter.

[16] The main issue to be decided in this matter is therefore whether the applicant had complied with all the terms of the agreement and lawfully exercised her option in terms of the agreement. The position in respect of an option was succinctly set out as follows in **Hirschowitz v Moolman and Others**[2] :

> "*Now, the grant by an owner of property of an option to purchase the property amounts in law to an offer to the grantee of the option to sell the property to him and an agreement to keep that offer open for a certain period. The grantee acquires the right to accept the offer at any time during the stipulated period and, if he does so, a contract of purchase and sale immediately comes about*."

[17] An option to buy land concerns a transaction relating to a future sale of land and " *is in essence an offer coupled with an agreement to keep it open for a certain period*"[3] As such, as a bare minimum the option must include the description of the land and the purchase price and must be in writing. The option must also be accepted and exercised in the terms of the written agreement. The exercise of the option is thus the juristic act that perfects the sale and must be exercised in clear and unequivocal terms.[4] Until that act occurs in accordance with the terms of the option, no sale exists in law. Where a mode and time for the exercise of an option

[2] 1985 (3) SA 739 (A) at 763B-C:

[3] ((**Hersch v Nel** 1948 (3) SA 686 (A) at 695; **Venter v Birchholtz** 1972 (1) SA 276 (A) at 283D-284B)

[4] **Boerne v Harris** 1949 (1) SA 793 (A).

are prescribed, compliance is peremptory and absent valid exercise, there is no reciprocal contract and nothing capable of enforcement.

[18] In paragraph 5.5 and 5.6 of the applicant's founding papers the applicant stated that Mr Swart's letter of 7 May 2025 was *"an attempt to renegotiate the provision in the agreement" and* thereafter Mr Britz responded to the email and *"attempted to renegotiate the "entire agreement."* On the applicant's own version when these efforts failed, she decided to proceed with the transaction as initially intended. Significantly, the applicant conceded that the letter was an attempt to "*renegotiate"* the terms, which essentially means that there was no longer a meeting of the minds in respect of the terms of the original agreement.

[19] However, the issue is not the existence of the agreement and whether there was in fact an attempt to revise the agreement, but rather whether the option was lawfully exercised to constitute a binding agreement between the parties. The agreement was concluded on 30 April 2025. The option was granted for a fixed period ending on 30 May 2025. The agreement prescribed that the option had to be exercised in writing by email before expiry. The agreement expressly recorded that only upon the exercise of the option would a deed of sale come to effect.

[20] It is evident that no written notice was given on or before 30 May 2025 and as a result the option agreement had lapsed. Despite the attempted renegotiations to amend the terms of the agreement, the applicant never exercised the option in terms of clause 2 of the agreement. Applicant's contention that the "renegotiation letter" constituted the exercise of an option cannot be sustained. Thus, I find that by not exercising the option timeously in writing, the agreement had lapsed.

[21] It is trite that costs fall within the general discretion of the Court and that unless exceptional or unusual circumstances exist, costs normally follow the result. Both Counsel submitted that costs should follow the result. I am in agreement that this approach is fair, reasonable and justified under the circumstances.

[22] In the result the following order is made:

The application is dismissed with costs.

____

DEPUTY JUDGE PRESIDENT GOLIATH

Appearances

CARLOS FRADE
Attorney for Applicant
Frade Attorneys
30 Wassenaar Street
Mossel Bay
6506
Tel: 082 924 3221
Email: fradeattorneys@gmail.com
C/O J.C. Van Der Berg Attorneys
Room 103
100 York Street
George
6530
Tel: 044 873 0818

ADV D BADENHORST
Lamprecht Attorneys
Attorneys for Respondents
C/O JDC Attorneys
14a Reghoek Street
Bergsig
George
6529
Tel: 078 539 6230
Email: johan@jdcattorneys.co.za

ADV DL VAN DER MERWE
Thinus Johannes Louw
Attorney for Intervening Party
Raubenheimers Incorporated
60 Cathedral Street

George
6529
Tel: 044 873 2043
Email: sura@raubenheimers.co.za