IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Not Reportable

Case No: 278/2025

In the matter between:

FLG MG HOLDING (PTY) LTD **FIRST APPLICANT**

(Registration Number:2019/371087/07)

BATLAMEHI PRIMARY COOPERATIVE LIMITED **SECOND APPLICANT**

(Registration Number: 2022/603190/24)

and

BAREND JACOBUS KANES **FIRST RESPONDENT**

(Identity Number: 6[...])

BG DIAMANTBOERDERY CC **SECOND RESPONDENT**

(Registration Number: 2007/096170/23)

BRANDEWYNSKUIL CC **THIRD RESPONDENT**

(Registration Number: 1999/018222/23)

AGRI CREDIT SOLUTIONS (PTY) LTD **FOURTH RESPONDENT**

(Registration Number: 1990/006879/07)

HELENA ALETTA LUBBE N.O. **FIFTH RESPONDENT**

(Identity Number: 5[...])

Coram: Masike AJ

Date Heard: 29 August 2025

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail, and released to SAFLII. The date that the judgment is deemed to be handed down is **17 APRIL 2026** at **10h00**.

Summary: Civil Procedure - Interlocutory interdicts – whether requirements for interlocutory interdict have been met – law of contract – requirement of communication of acceptance – law of contract – right for seller to withdraw offer before acceptance by purchaser – doctrine of notice – requirements thereof – can party rely on doctrine of notice where sale agreement withdrawn by notice – *qui prior est tempore potior est jure* maxim – does the maxim find application where sale agreement withdrawn by notice – company law – non-compliance with s 46(b)(iii) and (iv) of the Close Corporations Act – costs legal principles repeated.

JUDGMENT

MASIKE AJ

Introduction

[1] FLG MG Holdings (Pty) Ltd (Registration number: 2019/371087/07), a company with limited liability and registered as such in accordance with the Company Laws of the Republic of South Africa with its registered address 2[…] A[…] Road, Bryanston, Sandton ("the first applicant") and Batlamehi Primary Cooperative Limited (Registration number: 2022/603190/24), a close corporation registered as such in accordance with the Company Laws of the Republic of South Africa with its registered address 3[…] Extension 1[…], T[…] Street, Wolmaransstad, North West ("the second applicant") have approached the court and seek orders against Barend Jacobus Kanes ("the first respondent"), BG Diamantboerdery CC ("the second respondent"), Brandewynskuil CC ("the third respondent"), Agri Credit Solutions (Pty) Ltd ("the fourth respondent") and Helena Aletta Lubbe N.O. ("the fifth respondent") as set out in the notice of motion in the following terms:

'1. That the forms and service provided for in the Uniform Rules of Court be dispensed with and that the Application be enrolled and heard as an Urgent Application in terms of Rule 6(12)(a).

2. That, pending the finalisation of the action proceedings by the Applicants or eviction proceedings instituted by the First, Second and Third Respondent against the Applicants for the purpose of evicting the Applicants from the property, namely the Remainder of Portion 12 (a Portion of Portion 14). Remainder of Portion 14 and Remainder of Portion 11 (a Portion of Portion 10) of Farm Brandewenskuil 102, Registration Division HP, Maquassi-Hills Local Municipality ("**the Subject Property**"), the First and Second Respondents are ordered: -

2.1 not to interfere with the Applicants' lawful, peaceful, and undisturbed possession of the Subject Property;

2.2 to immediately restore the supply of electricity to the Subject Property;

2.3 not to insult, intimidate and threaten the Applicants' employees at the Subject Property.

3. Costs of suit, if opposed.

4. Further and/or alternative relief.'

[2] The first, second, and third respondents initially opposed the application. The third respondent withdrew its opposition, and a notice to abide was filed on its behalf. The application served before Reddy J on 14 February 2025. Reddy J struck the application from the roll for lack of urgency and ordered the first and second applicants to pay the costs jointly and severally, the one paying the other to be absolved.

[3] On or about 26 August 2025, the first and second applicants filed an amended notice of motion in terms of which the first and second applicants sought relief in the following terms against the first, second, and third respondents:

'1. That, pending the finalisation of the action proceedings by the Applicants or eviction proceedings instituted by the First, Second and Third Respondents against the Applicants for the purpose of evicting the Applicants from the property, namely the Remainder of Portion 12 (a portion of Portion 14), Remainder of Portion 12 and the Remainder of Portion 11 (a Portion of Portion 10) of the Farm Brandewynskuil 102, Registration Division HP, Maquassi – Hills Local Municipality ("the Subject Property), the First and Second Respondents are ordered: -

1.1 not to interfere with the Applicants' lawful, peaceful and Undisturbed possession of the Subject Property;

1.2 not to insult, intimidate, and threaten the Applicants' employees at the Subject Property.

2. Costs of suit.

3. Further and/or alternative relief.'

[4] The issue of urgency has been dealt with by Reddy J, and the first and second applicants have abandoned the relief sought in prayer 2.2 of the initial notice of motion. The application serves before this Court for the determination of the prayers set out in the amended notice of motion.

Factual Background

[5] On or about 10 June 2022, and at Klerksdorp, the third respondent, purportedly represented by the fifth respondent, entered into a lease agreement with the second applicant in terms of which the third respondent leased to the second applicant the Farm 102 (Portion 14) of the Farm known as Brandewynskuil Registration Division HP, measuring 200 hectares held by the third respondent in terms of deed of transfer no. T[…] ('the Farm').

[6] It is the case of the first and second applicants, subsequent to the conclusion of the lease agreement, the children of the late Mr Johannes Jacobus Lubbe ('the late Mr Lubbe'), attacked the validity of the lease agreement on the basis that the fifth respondent did not have the authority to conclude the lease agreement in respect of the farm on behalf of the third respondent. The first and second applicants allege that the children of the late Mr Lubbe insisted that a second lease agreement be entered into with the third respondent, but that the third respondent be represented by one of the late Mr Lubbe's children.

[7] On or about 18 May 2023, a second lease agreement was entered into between the second applicant and the third respondent, duly represented by Mr Johan Lubbe, one of the late Mr Lubbe's children. Under this lease agreement ('the second lease agreement'), the third respondent leased the property, Portion 14 of the farm Brandewynskuil 102 ('the property'), to the second applicant. It is common cause that the Farm and the property are one and the same, and that the second lease agreement replaced the lease agreement entered into on 10 June 2022. The agreed rental for the property was R30 000.00 per month until 30 June 2023, after which the rental would escalate by 5% on 1 July 2023 and by a further 5% each succeeding year in July, calculated on the rental of the preceding year. The second lease agreement was valid until 30 June 2025. It was a specific term of the second lease agreement that the agreed rental amount be paid into the trust account of the attorneys of the third respondent, Theron Jordan & Smit Inc.

[8] The first and second applicants allege that, upon entering into the lease agreement and the second lease agreement, they took lawful possession of and occupied the Farm, also known as the property. The first and second applicants allege that on or about 29 June 2023, the first and second applicants duly represented, consulted with the attorney of the third respondent about the possibility of concluding a sale agreement with the third respondent. In terms of the proposed sale agreement, the first applicant would purchase the land known as:

'1. The Remainder of Portion 12 (a Portion of Portion 14) of the Farm Brandewynskuil, 102 Registration Division H.P Province North West Measuring: 890793 (Eighty Nine Comma Zero Seven Nine Three) Hectares Held by Deed of Transfer Number T[…]

2. The Remainder of Portion 14 of the Farm Brandewynskuil 102, Registration Division H.P Province North West Measuring: 179, 6719 (One Hundred Seventy Nine Comma Six Seven One Nine) Hectares Held by Deed of Transfer Number T[…]

3. The Remainder of Portion 11 (a Portion of Portion 10) of Farm Brandewynskuil 102, Registration Division H.P. Province North West Measuring: 252, 4052 (Two Hundred Fifty Two Comma Four Zero Five Two) Hectares Held by Deed of Transfer Number T[…]' ('the Farm Brandewynskuil 102')'

[9] The Farm Brandewynskuil 102, which the first applicant proposed to purchase from the third respondent, comprises the Farm/the property, and other portions of the land that did not form part of the lease agreement or the second lease agreement. On 10 August 2023, a formal letter of demand from the attorney of the third respondent was sent to the second applicant's attorney, demanding payment of the arrears in rental, amounting to R63 000.00. On 25 August 2023, the erstwhile attorney of the first and second applicants, a Mr Surprise Raseasala ('Mr Raseasala'), contacted the attorney of the third respondent to discuss the proposed sale agreement. The first applicant proposed to purchase the Farm Brandewynskuil 102 for R3 000 000.00.

[10] On 25 August 2023, the attorney for the third respondent confirmed in writing the discussion she had with Mr Raseasala. Mr Raseasala was informed that the members of the third respondent accepted the offer of R3 000 000.00 in principle. Mr Raseasala was reminded that his client (the second applicant) was in arrears of R63 000.00 in respect of the rental of the property, and that the amount was demanded.

[11] On 2 October 2023, another letter of demand was forwarded to Mr Raseasala, demanding payment of the arrears rental of the property in the

amount of R106 000.00. A meeting was held on 10 November 2023 between the representatives of the first and second applicants and the third respondent. At this meeting, the representatives of the first and second applicants requested that a sale agreement be drafted for the purchase price of R3 000 000.00 of the Farm Brandewynskuil 102. A *pro forma* sale agreement was provided to the first applicant on 15 November 2023; the third respondent's members did not sign it.

[12] On 23 November 2023, the attorney of the third respondent forwarded the third respondent's signed sale agreement to Mr Raseasala. In the covering email, it was specifically stated that, should the first applicant fail to provide the attorneys of the third respondent with the signed copy of the sale agreement by 28 November 2023, the seller (third respondent) reserved the right to withdraw the offer.

[13] The first and second applicants in their replying affidavit have not disputed the contents of the email dated 23 November 2023. It is the contention of the deponent to the affidavit of the first and second applicants, Mr Sipho Frans Makgalamele (‘Mr Makgalamele’), that on 23 November 2023, he met with Mr Johan Lubbe, a member of the third respondent. Mr Johan Lubbe at that meeting provided Mr Makgalamele with a hard copy of the sale agreement, which the members of the seller, the third respondent, signed.

[14] Mr Makgalamele further alleges that he was advised by Mr Johan Lubbe that the attorney of the third respondent would send the sale agreement to Mr Makgalamele in due course via email and that the hard copy of the sale agreement given to Mr Makgalamele should be dated, any date prior to the date

23 November 2023, to indicate that the offer was from the purchaser (the first applicant) which was accepted by the seller (the third respondent) thereafter. Mr Makgalamele alleges that he signed the sale agreement as per the discussion with Mr Johan Lubbe. From the perusal of the email from the attorneys of the third respondent, dated 23 November 2023, addressed to Mr Raseasala, it appears that Mr Makgalamele was one of the recipients.

[15] On 28 November 2023, the erstwhile attorney of the first applicant, Mr Raseasala, forwarded an email to the third respondent's attorneys stating that the first applicant is awaiting payment from its source. In this email, no mention is made that representatives of the first applicant have signed the sale agreement, nor was it forwarded to the attorney of the third respondent. On 7 December 2023, the attorney of the third respondent forwarded a letter to the erstwhile attorney of the first applicant, Mr Raseasala, confirming the extension of the payment of the purchase price and delivery of the signed sale agreement until 20 December 2023. On 11 January 2024, the attorney of the third respondent forwarded an email to Mr Raseasala, the erstwhile attorney of the first applicant, confirming that neither payment nor the signed sale agreement had been received. In this email, Mr Makgalamele was one of the recipients of the email.

[16] On 2 February 2024, the attorney of the third respondent sent a letter to the erstwhile attorney of the first applicant, Mr Raseasala. The letter stated that the third respondent no longer intends to sell Farm Brandewynskuil 102 as per the sale agreement provided to the first applicant, and that the sale agreement is *null and void*. On the same date, the attorneys of the third respondent sent a letter of demand to the erstwhile attorneys of the second applicant, Mr Raseasala, demanding payment of the arrears of rental for the property in the

amount of R232 000.00 and confirming the cancellation of the second lease agreement.

[17] On behalf of the first and second applicants, it is contended that the reason the first applicant did not affect payment of the agreed sale amount for the Farm Brandewynskuil 102 is because of the dispute between the fifth respondent and the children of the late Mr Lubbe. It is further contended that a member of the third respondent, Mr Johan Lubbe, advised the first and second applicants to pause with payment of the purchase price until such disputes were resolved and finalised. It is contended on behalf of the first and second applicants that the dispute is still ongoing and that the third respondent has not advised them that it has been resolved or that the purchase price can be paid.

[18] As it relates to the failure of the second applicant to pay the occupational rental of the property, it is contended on behalf of the first and second applicants that the failure to pay the rental was a consequence of the conclusion of the sale agreement between the first applicant and the third respondent. The first and second applicants rely on clauses 6.1 and 6.2 of the sale agreement, which read as follows:

> '6.1 The Parties confirm that the Purchaser has already taken occupation and possession of a portion of the property in terms of which the Purchaser is in arrears with the monthly occupation rent in the amount of R137 500.00 calculated for the period June 2023 to November 2023.
>
> 6.2 The Seller hereby confirms that the Purchaser is exempt from paying the arrear rental as well as any further rental on condition that the Purchaser is in compliance with the terms and conditions of this agreement.'

[19] On or about 14 February 2024, the attorneys of the third respondent sent a letter to Mr Raseasala, confirming that the third respondent does not intend to proceed with the sale agreement with the first applicant due to the first

applicant's failure to sign it despite numerous requests. The first applicant was further notified in that letter that the Farm Brandewynskuil 102 had been sold to a third party and that no further negotiations would be done with the first applicant.

[20] It is the case of the first and second applicants that on 14 October 2024, the attorneys of the first and second respondents, Taljaard, Niewoudt and Van Tonder Attorneys forwarded a letter to the first applicant in which the attorneys of the first and second respondent informed the first applicant that the Farm Brandewynskuil 102 had been registered in the name of the second respondent on 5 September 2024 and that the first applicant was requested to vacate the Farm Brandewynskuil 102. A copy of the letter of demand from the attorneys of the first and second respondents is attached to the founding affidavit of the first and second applicants. On perusal of the letter, this Court observed that it was addressed to the second applicant, not the first. In addition thereto, a copy of the deed of transfer was attached to the letter, and, from a cursory reading, it appears that ownership of the Farm Brandewynskuil 102 was indeed transferred from the third respondent to the second respondent on 5 September 2024.

[21] On 18 October 2024, the current attorneys of the first and second applicants, Edward Nathan Sonnenbergs (‘ENS’), forwarded a letter to the attorneys of the first and second respondents, and copied the attorneys of the third respondent. In its letter, ENS contended that the sale agreement between the first applicant and the third respondent was validly concluded. That, based on the doctrine of notice as well as the maxim *qui prior est tempore potior est jure*, ownership of the Farm Brandewynskuil 102 should be retransferred.

[22] The attorneys of the first, second, and third respondents, on 25 October 2024, replied separately to the letter from ENS. In their respective letters, the attorneys of the first, second, and third respondents insisted that the first and second applicants vacate the Farm Brandewynskuil 102. On 29 October 2024, ENS replied to the letters dated 25 October 2024 from the attorneys of the first, second, and third respondents. In their reply, ENS indicated that their clients would not be vacating Farm Brandewynskuil 102.

[23] It is the case of the first and second applicants that, on 4 September 2024, the first respondent attended at Farm Brandewynskuil 102 and cut off the supply of electricity. The first respondent, in his answering affidavit, denies this allegation and states that, at that time, the fifth respondent had obtained an interim protection from harassment order in terms of the Protection from Harassment Act 17 of 2011 ('the Harassment Act') against him, and that one of the orders granted by the Magistrate's Court Wolmarantstadt under case number PHA124/2024 prohibited the first respondent from visiting Farm Brandewynskuil 102.

[24] The first and second applicants, in reply, allege that on 23 November 2024, when the first respondent visited Farm Brandewynskuil 102, electricity was available. For the first time in reply, the first respondent is alleged to have subsequently instructed Eskom to disconnect the electricity supply to Farm Brandewynskuil 102, as the new owner of that farm.

[25] It is alleged that on 28 November 2024, the first respondent arrived on Farm Brandewynskuil 102 and again threatened the employees of the first and second applicants to vacate Farm Brandewynskuil 102. The attorneys of the first and second applicants issued a cease-and-desist letter, and the first respondent

failed to respond. The first respondent does not deny that the cease-and-desist letter was written; he did not reply to it, but he denies its contents that he attended the Farm Brandewynskuil 102 on 28 November 2024, or that he threatened the employees of the first and second applicants.

[26] It is alleged on behalf of the first and second applicants that between 15 and 20 December 2024, the first respondent once more attended on the Farm Brandewynskuil 102 and cut off the supply of electricity. The first respondent has denied this and insists that Eskom cut the electricity supply to Farm Brandewynskuil 102 due to the second applicant's non-payment.

[27] It is further alleged that on 6 January 2025, the first respondent attended on the Farm Brandewynskuil 102 and demanded that the employees of the first and second applicants vacate the Farm Brandewynskuil 102. During this visit, the first respondent is alleged to have threatened to burn any farming equipment belonging to the first and second applicants and to destroy their crops. The first respondent has denied this in his answering affidavit and contends that he did attend on the Farm Brandewynskuil 102 on 6 January 2025. On that day, he informed Mr Lesego, an employee of the first and the second applicants, that the second respondent is the new owner of the Farm Brandewynskuil 102. That they are not entitled to plant any crops on the Farm Brandewynskuil 102. The first respondent further stated that he would attach any crops they had planted. The first respondent denies having threatened to destroy the equipment of the first and second applicants or having threatened the lives of the employees of the first and second applicants.

[28] The first and second applicants allege that on 22 January 2025, the first respondent attended at the Farm Brandewynskuil 102 and threatened the

employees of the first and second applicants. The first respondent admits attending the Farm Brandewynskuil 102 but denies threatening the employees of the first and second applicants. It is the case of the first respondent that on that day, he attended at the Farm Brandewynskuil 102 with an employee of Tau Pele Construction, Francois Prinsoloo, to establish why they were being denied access to the Farm Brandewynskuil 102.

[29] It is alleged that on 24 January 2025, the first respondent attended on the Farm Brandewynskuil 102, broke the chain and locks and entered Farm Brandewynskuil 102, threatening to kill the employees of the first and second applicants. It is alleged that during this visit, the first respondent was accompanied by some unknown persons. The first respondent admits attending Farm Brandewynskuil 102 on 24 January 2025, but denies breaking the chains and locks and denies that anyone was threatened. The first respondent contends that on 24 January 2025, he was with Steven Marais to determine the reason for the lock.

[30] The first and second respondents raised four points *in limine* in this application. The first, no authority to act on behalf of the first and second applicants by Mr Makgalamele. This is because Mr Makgalamele failed to attach the resolutions of the first and second applicants to the founding affidavit he deposed to on their behalf, confirming that the first and second applicants have authorised the bringing of the application. The second, non-joinder of Eskom. The first and second respondents contend that the order sought in this Court directing that the electricity supply be restored to the Farm Brandewynskuil 102 will indirectly be against Eskom, and Eskom has not been given an opportunity to reply to such a potential order. The third, hearsay evidence; this is based on the failure to attach the confirmatory affidavits of the

employees of the first and second applicants, who allege they were threatened by the first respondent, and the fourth, lack of urgency.

[31] All the points in *limine* have been overtaken by events, and it becomes unnecessary for this Court to consider any of them. In the replying affidavit of the first and second applicants, Mr Makgalamele has attached the resolutions of the first and second applicants authorising the bringing of the application. In the heads of argument filed on behalf of the first and second respondents, it is submitted that the first and second respondents are not persisting with the point *in limine* that Mr Makgalamele lacked authority to institute the application on behalf of the first and second applicants. The amendment to the notice of motion abandoning the relief for an order directing the first, second and third respondents to immediately restore the supply of electricity to the Farm Brandewynskuil 102 renders it unnecessary to deal with the point *in limine* of non-joinder of Eskom.

[32] In addition, it is submitted in the heads of argument filed on behalf of the first and second applicants that the electricity supply to the Farm Brandewynskuil 102 has been restored. In the replying affidavit deposed to by Mr Makgalamele, the confirmatory affidavits of the employees of the first and second applicants who were allegedly threatened by the first respondent have been attached. The confirmatory affidavits of the fifth respondent, insofar as the allegations of the dispute between herself and the children of the late Mr Lubbe, have been attached. The confirmatory affidavits of the current attorney of record of the first and second applicants, as to the allegations made in the founding affidavit and the replying affidavit, have been attached. It is submitted in the heads of argument of the first and second respondents that they are not persisting with the point *in limine* of hearsay. On the issue of urgency, Reddy J

dealt with it *in limine* on 14 February 2025, upholding it and striking the application from the roll for lack of urgency.

Legal Principles

[33] The first and second applicants seek an interlocutory interdict against the first, second and third respondents. An interlocutory interdict is one which is granted *pendente lite*. There must be legal proceedings pending between the parties.[1] It is a provisional order designed to protect the rights of the complainant party pending an action or application to be brought by him/her to establish the respective rights of the parties[2]. It does not involve a final determination of the parties' rights and does not affect such a determination[3]. Its effect is to 'freeze' the position until the court decides where the right lies at which point it ceases to operate[4]. It is aimed at ensuring, as far as is reasonably possible, that the party who is ultimately successful will receive adequate and effective relief[5].

[34] The general rule is that the applicant must be a person having *locus standi* to apply in that he/she has an interest in the subject matter of the interdict[6]. A party which cannot demonstrate an extant right in property could nonetheless apply for an interdict to preserve the property concerned if it could make out a prima facie case that it would receive relief in the future from which a right in the property would flow[7].

---

[1] *Pikoli v President of Republic of South Africa (Pikoli)* 2010 (1) SA 400 (GNP) at 403H).
[2] *Pikoli* at 403I; *Airoadexpress (Pty) Ltd v Chairman, Local Road Trans-portation Board, Durban* 1986 (2) SA 663 (A) at 681D–F.
[3] *Apleni v Minister of Law and Order* 1989 (1) SA 195 (A) at 201B; *Pikoli* at 403I – 404A.
[4] *Jordan v Penmill Investments CC* 1991 (2) SA 430 (E) at 436F.
[5] *Pikoli* at 404A.
[6] *Cabinet of the Transitional Government for the Territory of South West Africa v Eins* 1988 (3) SA 369 (A) at 388A–I.
[7] *Antares International Ltd v Louw Coetzee & Malan* Inc 2014 (1) SA 172 (WCC) at 188C–E, 188I and 190G–H.

[35] The person against whom an interdict is sought must be the person responsible, either as principal or as agent, for the wrong committed or threatened; and in appropriate circumstances, third parties may have to be cited.

[36] In order for the first and second applicants to succeed with the relief that they seek, they must satisfy this Court that they have: '(a) a *prima facie* right; (b) a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; (c) a balance of convenience in favour of the granting of the interim relief; and (d) the absence of any other satisfactory remedy.'[8]

[37] An interdict will be granted if the court is satisfied that the applicant has a right established upon a balance of probabilities and that the respondent has invaded it or threatens to do so[9]. The *prima facie* right, which the applicant must first identify, is, of course, less stringent than that claimed in a final interdict. This means that the applicant bears the onus to place sufficient evidence before the court to show the existence of a right, even though, by reason of denials by the respondent, some doubt is thrown on the existence of that right. If, on the probabilities, there is great doubt, then the applicant will not be entitled to an interdict, even temporarily.[10]

[38] A well-grounded apprehension of irreparable harm if the interim relief is not granted. This is defined as the loss of property (including incorporeal property and money) in circumstances where its recovery is impossible or improbable. The harm must be anticipated or ongoing.[11] If the applicant can

---

[8] *Setlogelo v Setlogelo* 1914 AD 221 at 227; *South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* [2014] ZACC 8; 2014 (6) BCLR 726 (CC); 2014 (4) SA 371 (CC) 2014 (4) SA 371 (CC) para 24.
[9] *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1188.
[10] *Msunduzi Municipality v Natal Joint Municipal Pension/Provident Fund* 2007 (1) SA 142 (N) at 152E–G.
[11] *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) at 231D; *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) at 300B.

establish a clear right, his/her apprehension of irreparable harm need not be established.[12]

[39] If the infringement complained of *prima facie* appears to have occurred once and for all and is finished and done with, the applicant should allege facts justifying a reasonable apprehension that the harm is likely to be repeated.[13]

[40] A balance of convenience in favour of the granting of the interim relief. This Court must weigh the prejudice to the first and second applicants if the interlocutory interdict is refused against the prejudice to the first, second and third respondents if it is granted.[14] This is determined by consideration of the prospects of success in the main action and the balance of convenience. The stronger the prospects of success, the less need for the balance of convenience to favour the first and second applicants; the weaker the prospects of success, the greater the need for the balance of convenience to favour the first and second applicants.[15]

[41] The absence of another adequate ordinary remedy. Being a drastic remedy from the respondent's point of view and (probably largely for that reason) in the court's discretion, the court will not, in general, grant an interdict when the applicant can obtain adequate redress in some other form of ordinary relief. The courts will not, in general, grant an interdict when the applicant can obtain adequate redress by an award of damages.[16]

[12] *Ndauti v Kgami* 1948 (3) SA 27 (W) (*Ndauti*) at 36.
[13] *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at 347E–F.
[14] *Ndauti* at 36 – 37.
[15] *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 (3) SA 685 (A) at 691F–G; *Simon NO v Air Operations of Europe AB* 1999 (1) SA 217 (SCA) at 231G–I.
[16] *UDC Bank Ltd v Seacat Leasing and Finance Co (Pty) Ltd* 1979 (4) SA 682 (T) at 695D–696C.

[42] The requirement of the absence of another adequate remedy is closely linked to that of irreparable harm. If there is some other satisfactory remedy, it follows that the injury cannot be described as irreparable.[17]

[43] The court enjoys the discretion whether or not to grant an interdict.[18] No comprehensive rule can be laid down for the exercise of judicial discretion in granting or refusing interdicts, but the court must decide each case on its own circumstances.

[44] Where the facts are disputed in motion proceedings, the court must, as a general rule, decide the matter on the respondent's version of the facts, unless that version is so far-fetched or clearly untenable that it falls to be rejected on the papers.[19] This rule applies throughout the analysis that follows, in respect of each disputed factual allegation.

Analysis

[45] The first and second applicants rely on the doctrine of notice. The first and second applicants contend that, based on this doctrine, they are entitled to claim that the transfer of the Farm Brandewynskuil 102 from the third respondent to the second respondent should be set aside so that such ownership can be transferred to the first applicant. The first and second applicants have referred to the decisions of *Le Roux v Nel and Another*[20] (*Le Roux*) and *Bowring*

---

[17] *Strarfield-Ward v Suluhisho Africa (Pty) Ltd* (unreported, GJ case no 2024/104051 dated 3 October 2024) at paragraph 38; *Desert Oil (Pty) Ltd v OP Bathlaro Filling Station (Pty) Ltd* (unreported, NCK case no 2161/2024 dated 18 September 2024) at paragraph [37]; Erasmus: Superior Court Practice Vol 2 at RS 26, 2025, D6-32.
[18] *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 361H–362C.
[19] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H–635C.
[20] (246/2013) [2013] ZASCA 109 (16 September 2013).

NO v Vrededorp Properties CC[21]. In *Le Roux,* Brand JA, writing for the court at paragraph 4, said the following on the doctrine of notice:

> 'In support of their claim for transfer the appellants relied on principles embodied in what has become well known in our law as the doctrine of notice. The operation of this doctrine in the sphere of successive sales has been described in previous cases along the following lines. The starting point is the basic principle of our law that a real right generally prevails over a personal right, even if the personal right is prior in time, when they come into competition with one another. <u>Accordingly, in the ordinary course, if a seller, A, sells a thing – be it movable or immovable – to B and subsequently sells the same thing to C, ownership is acquired, not by the earlier purchaser, but by the purchaser who first obtains transfer of the thing sold. If the first purchaser, B, is also the first transferee, his or her right is unassailable. If the second purchaser, C, is the first transferee, his or her right of ownership is equally unassailable if he or she had purchased without knowledge of the prior sale to B. But, if C had purchased with such prior knowledge, B is entitled to claim that the transfer to C be set aside so that ownership of the thing sold can be transferred by A to B. In exceptional circumstances B may be allowed to claim transfer directly from the purchaser with knowledge, C</u>.' (own emphasis)

[46] In order for the first applicant to succeed with its claim based on the doctrine of notice, the first applicant must allege and prove that when the third respondent entered into the sale agreement with the second respondent for the Farm Brandewynskuil 102, the second respondent or its members or its agents knew of the sale agreement between the third respondent and the first applicant ('the first sale agreement') and despite such knowledge, entered into the sale agreement with the third respondent.

[47] It is submitted in the written heads of argument filed on behalf of the first and second applicants, that based on the first respondent's averments in the

[21] (271/2006) [2007] ZASCA 80; 2007 (5) SA 391 (SCA) (31 May 2007).

answering affidavit, it is confirmed that he was aware of the first sale agreement and the circumstances surrounding such agreement. In my view, the contention on behalf of the first and second applicants on this point is speculative and overlooks two crucial issues under contract law. As a general rule, a contract is not concluded until the purchaser has not only decided to accept the offer, but has communicated that acceptance to the seller. There can be no contract until the seller knows that he/she and the purchaser are *ad idem*. The seller may prescribe the method of acceptance.[22]

[48] The doctrine of notice operates only where there is a prior valid personal right arising from a concluded contract. Where no contract has been concluded because the purchaser's acceptance was never communicated to the seller, there is no prior personal right to which the doctrine can attach. On the facts of this matter, even on the first and second applicants' own version, no acceptance was ever communicated to the attorney of the third respondent. The alleged signing of the hard copy of the sale agreement by Mr Makgalamele at the direction of Mr Johan Lubbe, with back-dating and without forwarding the signed document to the third respondent's attorney, cannot constitute a valid communication of acceptance. Communication of acceptance requires that it be brought to the notice of the seller[23]. No such communication was made on or before 28 November 2023, on 20 December 2023, or at any time before the offer was withdrawn on 2 February 2024. The first applicant, therefore, acquired no personal right under the first sale agreement. In the absence of a prior personal right, the doctrine of notice cannot assist the first applicant.

[49] On the issue of the purchase price, the contention by Mr Makgalamele, that Mr Johan Lubbe told him not to pay the purchase price until the dispute

[22] Christie's Law of Contract in South Africa, 7th Edition at Pages 82 to 83.
[23] Christie's Law of Contract in South Africa, 7th Edition at Pages 82–83

between the children of the late Mr Lubbe and the fifth respondent is resolved, and he has not been told that the dispute is resolved and payment should be made of the purchase price. There is no merit in this contention, and it is nullified by the letters from the attorneys of the third respondent dated 7 December 2023 and 11 January 2024. In these letters, demand was made for the signed sale agreement and purchase price of the Farm Brandewynskuil 102. Despite the demand that was made for the signed sale agreement and purchase price of the Farm Brandewynskuil 102, the first applicant failed to comply with the demand.

[50] On 2 February 2024, the attorney of the third respondent addressed a letter to the erstwhile attorney of the first applicant, confirming that the third respondent is no longer intending to sell the Farm Brandewynskuil 102 to the first applicant. This brings me to the second crucial issue that the first applicant has overlooked in contract law. The seller may withdraw the offer at any time before it has been accepted.[24] The withdrawal becomes effective only from the time it comes to the notice of the purchaser.[25]

[51] It is not disputed in the replying affidavit deposed to by Mr Makgalamele on behalf of the first and second applicants that the letter dated 2 February 2024 was forwarded to the erstwhile attorney of the first applicant, and that in that letter the third respondent withdrew the offer to sell the farm Brandewynskuil 102 to the first applicant. Quiescence is not necessarily acquiescence; a party who does not make a firm repudiation of an allegation when bound to do so incurs the risk of an adverse inference being drawn against him/her.[26]

[24] *Robarts v Antonie NO* [2014] 3 All SA 160 (SCA) para [21].
[25] *Yates v Dalton* 1938 EDL 177.
[26] *McWilliams v First Consolidated Holdings (Pty) Ltd* 1982 (2) SA 1 (A) at 10D – H.

[52] Mr Makgalamele was in a position to deny that the letters dated 2 February 2024 had been forwarded to the erstwhile attorney of the first and second applicant. If the information was not within his knowledge, he could have stated as much in his replying affidavit. The primary purpose of the replying affidavit is to present evidence that refutes the case made out by the respondent in his answering affidavit.[27] If the first and second applicants' replying affidavit fails to admit, deny or confess and avoid allegations contained in the first and second respondents' answering affidavit, the court is entitled to accept that such allegations were not in dispute and were therefore correct.[28]

[53] This Court is of the view that the attorney of the third respondent properly gave notice of the withdrawal of the sale agreement of the farm Brandewynskuil 102 to the erstwhile attorney of the first applicant, Mr Raseasala, on 2 February 2024. From the consideration of the contents of the letter from the attorneys of the third respondent, to the erstwhile attorney of the first and second applicants dated 14 February 2024, and having considered the deed of transfer of the farm Brandewynskuil 102 from the third respondent to the second respondent, it appears the third respondent sold the farm Brandewynskuil 102 to the second respondent after 2 February 2024 and the deed of transfer reads that the farm Brandewynskuil 102 was sold by the third respondent to the second respondent on 26 March 2024, which was clearly after the withdrawal of the sale agreement between the third respondent and the first applicant.

[54] The *qui prior est tempore potior est jure* maxim equally does not find application in the application before this Court. In *Gugu and Another v*

---

[27] *Standard Bank of SA Ltd v Sewpersadh and Another* - 2005 (4) SA 148 (C) at Page159 G–H.
[28] *Minister of Social Development and Another v Mpayipheli* (CA135/16) [2018] ZAECMHC 31 (26 June 2018) Para [15].

Zongwana and Others, Van Zyl ADJP, writing for the full court at paragraph 32, said the following:

'In other words, the existence of an agreement for the sale of a specific thing does not prevent the creation of a competing personal right *ex-contractu* for the delivery or the transfer of the same moveable or immovable thing. Consequently, ownership is generally not acquired by the purchaser whose contract was the earlier one, <u>but by the purchaser who was the first to obtain delivery or transfer without knowledge of the existence of the prior right of another.</u>' (own emphasis)

[55] The maxim *qui prior est tempore potior est jure* requires, as a precondition, the existence of two competing personal rights arising from concluded contracts. Where the first "contract" was never brought into existence because the putative purchaser never communicated acceptance to the seller, there is no prior personal right from which the maxim can operate. In the present matter, for the reasons set out above, no contract was ever concluded between the first applicant and the third respondent. The first applicant consequently cannot invoke the maxim. This is, separately and independently, a further reason why the first applicant cannot succeed with this ground of its claim. Even if a first sale agreement had been concluded, the first applicant would also have had to establish that the second respondent had knowledge of it when the sale between the second and third respondents was entered into on 26 March 2024, an evidentiary burden it has failed to discharge on the papers before this Court.

[56] The second lease agreement was validly cancelled by the third respondent based on the second applicant's persistent failure to pay the agreed monthly rental. The letters of demand dated 10 August 2023 (R63 000.00), 2 October 2023 (R106 000.00), and 2 February 2024 (R232 000.00) evidence a sustained and uncontested failure to meet the contractual payment obligation.

The third respondent was accordingly entitled to cancel the second lease agreement and did so by the letter of 2 February 2024 addressed to the erstwhile attorney of the second applicant. The reliance by the first and second applicants on clauses 6.1 and 6.2 of the first sale agreement cannot avail the second applicant. Those clauses expressly refer to “the Purchaser”, that is, the first applicant in its capacity as purchaser under the sale agreement, and not to the second applicant in its capacity as lessee under the second lease agreement. Moreover, even if the second applicant could have relied on clause 6.2, that provision was conditioned on the purchaser’s compliance with all the terms and conditions of the sale agreement. The first applicant failed to comply with the sale agreement. The clause, therefore, afforded no protection to the second applicant, and the cancellation of the second lease agreement was legally effective.

[57] It is contended in the heads of argument filed on behalf of the first and second applicants that, in terms of ss 46(b)(iii) and 46(b)(iv) of the Close Corporations Act (‘CC Act’), a special resolution of the members of the third respondent was required before the third respondent could enter the sale agreement with the second respondent. It is further contended that the fifth respondent is the surviving spouse of the late Mr Lubbe and the sole beneficiary and the executrix of the Estate of the late Mr Lubbe. It is submitted that the late Mr Lubbe had a member interest in the third respondent. Upon his passing, the member's interest fell into the Estate of the late Mr Lubbe and was under the authority and power of the fifth respondent. It is further submitted that the fifth respondent has not approved of the sale agreement between the third respondent and the second respondent. As a result, the Farm Brandewynskuil 102 could not be disposed of without the fifth respondent’s consent.

[58] Section 46(b)(iii) and s 46(b)(iv) of the CC Act reads as follows:

'**46. Variable rules regarding internal relations**

The following rules in respect of internal relations in a corporation shall apply, so far as this Act or an association agreement in respect of the corporation does not provide otherwise:

(a) ….

(b) subject to the provision of section 47, members shall have equal rights regarding the management of the business of the corporation and in regard to the power to represent the corporation in the carrying on of its business: Provided that the consent in writing of a member holding a member's interest of at least 75 per cent, or of members holding together at least that percentage of the members' interests, in the corporation, shall be required for—

(i) ….

(ii) ….

(iii) a disposal of all, or the greater portion of, the assets of the corporation; and

(iv) any acquisition or disposal of immovable property by the corporation;'

[59] The reliance on ss 46(b)(iii) and (iv) of the CC Act by the first and second applicants was raised for the first time in their heads of argument. This point was not raised in the founding affidavits of the first and second applicants. In *Biyela v Minister of Police*[29], Musi AJA, writing for the court, said the following:

'It goes without saying that a trial by ambush is unfair; courts should be very slow to allow a party to mount a case at trial other than the one that the party has pleaded. In *Minister of Safety and Security v Slabbert,* it was stated that:
'The purpose of pleadings is to define the issues for the other party and the court. A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for

[29] (1017/2020) [2022] ZASCA 36; 2023 (1) SACR 235 (SCA) (1 April 2022) para [8]

a plaintiff to plead a particular case and seek to establish a different case at trial.' (footnotes omitted)

[60] In my view, there was a duty on the first and second applicants to have given notice of their intention to raise their reliance on ss 46(b)(iii) and (iv) of the CC Act in their founding affidavit. The procedures followed by the first and second applicants should not be encouraged, as they amount to litigation by ambush. The first and second respondents were, in my view, prejudiced by the point being raised for the first time in the heads of argument of the first and second applicants. The first and second respondents met the challenge in their heads of argument.

[61] It is submitted on behalf of the first and second respondents in their heads of argument that non-compliance with ss 46(b)(iii) and (iv) of the CC Act does not render the particular transaction void but merely renders the transaction unenforceable. The first and second respondents rely on the decision of *Farren v Sun Service SA Photo Trip Management (Pty) Ltd*[30]. The contention raised in the heads of argument of the first and second respondents on this issue further reads that non-compliance with the provisions of s 228 of the Companies Act 61 of 1973 ('Old Companies Act') and s 112 of the Companies Act 71 of 2008 ('New Companies Act') renders the particular transaction merely unenforceable, and not void. I refrain from expressing my view on the correctness or otherwise of this submission. In my view, the decision of *Badenhorst NO v Manyatta Properties Close Corporation and Others*[31] *(Badenhorst)* makes it unnecessary to address the submission of the first and second respondents.

---

[30] 2004 (2) SA 146 (C) para [11], [13]

[31] (049/2024) [2025] ZASCA 194 (17 December 2025)

[62] In *Badenhorst* at paragraphs 51 to 53, Keightley JA, writing for the court, said the following:

> ‘[51] To succeed in establishing this ground for special leave to appeal, the applicant must demonstrate that the sale and transfer of the property to Nikifon was not simply arguably invalid, but patently so. He relies on the common-cause fact that Mr. de Witt signed the sale and transfer documents as the holder of 50 percent of the member’s interest in Manyatta without the written authority of Ms Metzer as the holder, in her representative capacity, of the remaining 50 percent. The applicant’s case is that the inevitable consequence of this contravention of s 46(b)(iv) of the CC Act is that Mr de Witt had no power to bind Manyatta to the transaction. This absence of authority rendered the real agreement fatally defective. Consequently, he contends, the full court patently erred in concluding that the transfer of the property to Nikifon was valid.
>
> [52] The difficulty for the applicant is that s 46(b)(iv), which forms the cornerstone of his case, cannot be considered in isolation. It is a provision regulating the internal relations of close corporations. Other provisions of the CC Act regulate close corporations in their transactional relationships with third parties. Central to this matter is s 54(2), which provides:
>
> “Any act of a member shall bind a corporation whether or not such act is performed for the carrying on of the business of the corporation unless the member so acting has in fact no power to act for the corporation in the particular matter and the person with whom the member deals has, or ought reasonably to have, knowledge of the fact that the member has no such power.” (My emphasis.)
>
> [53]Section 54(2) is significant because it recognises that not all transactions lacking authority will be invalid. Its purpose is to protect third parties who bona fide transact with a close corporation in the reasonable belief that a member is authorised to act on its behalf, even if that authority de facto is absent. The effect is that where the third party satisfies the section’s requirements, the close corporation will be bound *ex lege*

> to comply with its obligations. The question is whether Nikifon satisfied these requirements.'

[63] The first and second respondents did not have the opportunity to explain why they believed that the members of the third respondent, who represented the third respondent when the sale agreement was entered into with the second respondent, could act on behalf of the third respondent. The answering affidavits of the first and second respondents met the case pleaded by the first and second applicants. In my view, the alleged issue of non-compliance with ss 46(b)(iii) and (iv) of the CC Act does not assist the case of the first and second applicants. This issue should be raised by the fifth respondent in a separate application, should she so wish, under s 49 of the CC Act. It has not been contended by any of the parties that the fifth respondent has instituted proceedings to set aside the sale agreement between the second respondent and the third respondent for the Farm Brandewynskuil 102.

[64] In my view, the first and second applicants have failed to make out a case that they have a *prima facie* right because a serious doubt is cast on their claim. The first lease agreement was superseded by the second lease agreement. The second lease agreement was validly cancelled. The sale agreement between the first applicant and the third respondent was validly withdrawn before the first applicant could accept the seller's offer. As a result, no sale agreement was concluded. In my view, the first and second applicants do not have the right to possess or occupy Farm Brandewynskuil 102. The failure of the first and second applicants to establish a *prima facie* right is, in itself, fatal to the application and sufficient to dismiss it. Nevertheless, in the interests of completeness and if this Court's conclusion on the *prima facie* right is wrong, this Court proceeds to consider the remaining requirements.

[65] The application was struck from the roll by Reddy J on 14 February 2025 for lack of urgency. From the time that the application was struck from the roll to the date when it was heard by this Court, on 29 August 2025, the first and second applicants have not filed a supplementary affidavit setting out further conduct on the part of the first respondent, the first and second applicants have failed to allege facts justifying a reasonable apprehension that the harm is likely to be repeated.

[66] The balance of convenience does not favour the granting of the relief sought by the first and second applicants. The sale agreement between the first applicant and the third respondent was withdrawn before the first applicant accepted the offer and communicated such acceptance to the third respondent, and affected payment of the purchase price of the Farm Brandewynskuil 102; as a result, no sale agreement came into existence between the first applicant and the third respondent. The lease agreement between the second applicant and the third respondent was validly cancelled for non-payment of the agreed rental. The farming activities on the Farm Brandewynskuil 102 are without the consent of the second respondent or the third respondent and are, as a result, unlawful.

[67] The employees of the first and second applicants could have approached the Magistrate's Court for an order in terms of the Harassment Act, just like the fifth respondent obtained an order against the first respondent; there was nothing precluding the employees of the first and second applicants and the first and second applicants from obtaining such an order against the first respondent. Having considered the facts of the case of the first and second applicants, the applicants' application should consequently fail.

Costs

[68] It is a trite principle in our jurisprudence that costs follow the cause, and I have not found any reason to deviate from this principle. The first and second applicants failed to disclose material facts in their founding affidavit. The following documents, all of which were known to the first and second applicants or Mr Makgalemele or their erstwhile attorneys, were not disclosed: (a) the email of 23 November 2023 from the attorneys of the third respondent to the erstwhile attorney of the first applicant and to Mr Makgalemele, which contained the signed sale agreement and expressly required written acceptance by 28 November 2023, failing which the third respondent reserved the right to withdraw the offer; (b) the letter of 7 December 2023 to the erstwhile attorney of the first applicant extending the deadline for the signed sale agreement and payment of the purchase price to 20 December 2023; (c) the letter of 11 January 2024 to the erstwhile attorney of the first applicant and Mr Makgalemele confirming that neither the signed sale agreement nor payment of the purchase price had been received; (d) the letter of 2 February 2024 to the erstwhile attorney of the first and second applicants in which the third respondent withdrew the offer to sell Farm Brandewynskuil 102 to the first applicant and confirmed the cancellation of the second lease agreement with the second applicant; and (e) the letter of 14 February 2024 to the erstwhile attorney of the first and second applicants confirming that Farm Brandewynskuil 102 had been sold to a third party and that no further negotiations would be entertained. The non-disclosure of these documents was material. Had they been disclosed, it would have been apparent on the face of the founding papers that neither the first applicant had a valid sale agreement nor the second applicant an extant lease agreement. The application, on any view, should never have been brought.

[69] The purpose of an award of costs is to indemnify a successful party who has incurred expenses in instituting or defending an action[32]. The first and second respondents should not incur any out-of-pocket expenses in opposing the application. The first and second applicants, at the time they brought this application, knew or must have known that the offer to purchase Farm Brandewynskuil 102 had been withdrawn and that the second lease agreement had been validly cancelled. They had received, through their erstwhile attorneys or Mr Makgalemele, the letters referred to above and were fully apprised of the position. Notwithstanding this, they launched an application in which they persisted with a claim to the rights of a purchaser under a sale agreement that was never concluded and the rights of a lessee under a lease that had been lawfully cancelled. This Court disapproves of the manner in which the first and second applicants litigated this application. The bringing of litigation with knowledge that the underlying right no longer exists, and with deliberate non-disclosure of the documents that would have made that plain, justifies a description of the application as vexatious and warrants a costs order on the attorney and client scale.

Order

[70] Resultantly, the following order is made.

1. The application is dismissed.

2. The first and second applicants are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved, on the attorney and client scale.

---

[32] *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467 at 488

T MASIKE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

<u>APPEARANCES</u>

For the applicants:	Mr. D M Molapo
Instructed by:	Edward Nathan Sonnenbergs Inc.
	c/o Minchin & Kelly Inc.
For the first and second respondents:	Adv L Hollander
Instructed by:	Theron Jordaan & Smit Inc.
	C/O CJP Oelofse Attorneys