REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

Case No: 132059/2024

Reportable: No
Of interest to other Judges: No
Revised: No

[redacted]

SIGNATURE

Date: 29 April 2026

In the matter between:

LEON GRIESEL	First Applicant
MARTHA SUSANNA VAN JAARSVELD	Second Applicant

and

THE MASTER OF THE HIGH COURT	First Respondent
EXECUTORS GROUP (PTY) LTD	Second Respondent
PHILLIP COETZEE N.O.	Third Respondent

JUDGEMENT

MOOKI J

1 The applicants lodged a claim against a deceased estate. The executor rejected the claim and published the first and final liquidation account. The applicants objected to the account. The Master overruled the objection. The applicants now seek that the court set aside the decision by the Master and that the excutor be ordered to amend the account by including a claim by the applicants. The relief is sought pursuant to section 35(10) of the Administration of Estates Act, 66 of 1965 (the Act).

2 The Master did not file papers nor participate in the proceedings. The Master appointed Mr Phillip Coetzee (Executor), the sole director of the second respondent, executor of the estate of the late Andrew Christodoulou (the deceased/Mr Christodoulou).

3 Mr Christodoulou, before his death, sold immovable property to the applicants. The Master authorised the transfer of the property to the applicants in terms of section 42(2) of the Act.

4 The applicants claimed against the estate based on the applicants having to incur expenses for ensuring that there was adequate water on the property. The applicants initially claimed the amount of R115 673.19. The amount was presented to the Executor as a quotation for drilling and equipping a

borehole because the property was represented as having ample water for the applicants' intended agricultural activities. The applicants ultimately claimed R211 903.65. This amount was also set out in quotations.

5 Mr Coetzee rejected the claim and published the first and final liquidation account. The applicants objected to the account. The Master refused their objection, leading to this application.

6 The applicants contend that an agent of the deceased marketed the property on an understanding that the property had to have adequate water because the applicants intended to use the property for agricultural purposes. The property had three boreholes.

7 The applicants signed the purchase agreement on 23 March 2023. The agent gave the applicants an unsigned borehole certificate on 16 May 2023. The certificate recorded that one of the boreholes produced 206 litres per hour. The applicants wrote to the agent on 30 May 2023, saying the borehole yield was insufficient, including for domestic use.

8 The applicants say they raised the issue of the inadequate water with the transferring attorneys. Those attorneys threatened the applicants and obliged the applicants to pay outstanding amounts for the attorneys to effect transfer. The applicants say they obliged by making the payments.

9 The Master, in rejecting the objection by the applicants, pointed out that their claim was premised on a stated misrepresentation that the property had adequate water. The Master refused the objection essentially on the following bases: the purchase agreement has a condition regarding a

borehole yield test and water quality certificate of compliance, but that the applicants proceeded with the sale whilst aware that there would be insufficient water according to their standards.

10 The Master did not, as stated above, participate in the proceedings. The Executor filed opposing papers. The Executor raised several preliminary objections, namely:

(1) mis-joinder in citing the second respondent;

(2) non-joinder of Mr Coetzee as the executor;

(3) failure to set-out a cause of action;

(4) the existence of disputes of fact;

(5) the court cannot determine the specific amount which the applicants seek to be reflected in the Liquidation and Distribution Account, given the dispute in the papers, and

(6) It was not shown that the Master did not apply her mind to the objection by the applicants.

11 The Executor denies that the applicants are entitled to relief on the merits. He pointed out, for example, that the applicants made a hand annotation on the agreement of sale but did not record that it was a requirement that the property should have adequate water. This, according to the Executor, would have been written-up in the agreement if adequate water was an important requirement for the applicants. The Executor took issue with the

applicants' reliance on the estate agent because it was hearsay. The issue of availability of ample water, according to the Executor, surfaced late in the process. There was never a stipulation, according to the Executor, that it was a requirement that there be adequate water supply for agricultural purposes.

12 The Executor denies that the applicants were threatened, pointing out that the transferring attorneys were apologetic in requesting the applicants to pay the deposit to proceed with the sale, failing which the attorneys would be obliged to demand payment formally. The applicants did not register a protest when they replied to the request to pay the deposit.

13 The applicants invoke section 35(10) of the Act in setting aside the decision by the Master. The section provides as follows:

> Any person aggrieved by any such direction of the Master or by a refusal of the Master to sustain an objection so lodged, may apply bu motion to the Court within thirty days after the date of such direction or refusal or within such further period as the Court may allow, for an order to set aside the Master's decision and the Court may make such order as it may think fit.

14 The applicants attack the finding by the Master with reference to paragraphs 34[1], 35[2], 36[3], and 37[4] of the decision by the Master rejecting the applicants' objection.

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[1] "The executor argues that the buyer proceeded with the sale aware of the fact that there will be not (sic) enough yield and the executor rejected the objector's claim."

[2] "The objection (sic) was provided with the borehole certificate on 16 May 2023."

15 The Court, in proceedings pursuant to section 35(10) of the Act, can consider a matter afresh and may make any order the court deems fit.[5] The court has a wide discretion in such proceedings.

16 The applicants take issue with the Master accepting the executor's stance that the applicants proceeded with the sale notwithstanding being aware that there was inadequate water. The applicants say they were threatened by the transferring attorneys. I do not accept that the applicants were threatened as contended for. The transferring attorneys did nothing more than to impress on the applicants the need to complete the sale transaction and for the transfer of the property to be effected.

17 The applicants' primary attack, as encapsulated in their written submission, is that there was a misrepresentation as to the capacity of the boreholes and that such misrepresentation, in law, entitled the applicants to an election, namely; to cancel the agreement or to uphold the agreement and seek a reduction of the purchase price, alternatively, to seek damages. The applicants submit that they chose a reduction of the purchase price. It was submitted on behalf of the applicants that the Master erred in not upholding their objection to the liquidation and distribution account.

18 The applicants did not, in their founding affidavit, plead a cause of action based on a reduction in purchase price. The applicants did not plead that

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[3] "The e-mail from the buyer dated 21 August 2023 stating that the sale should proceed even though the water will not be adequate according to her standards, was provided in support of the executor's statement."

[4] "The objector did proceed with the same after receiving the borehole certificate and after informing the executor per e-mail that they should proceed with the sale, even though the water will not be adequate according to her standards."

[5] Freidrich and Others v Smit NO and Others 2017 (4) SA 144 (SCA), para 14.

the amount of R211 903.65 was a reduction in the purchase price. The relief in the founding affidavit is premised on the executor being directed to amend the liquidation and distribution account to reflect a claim in favour of the applicants in the amount of R211 903.65. This amount is said to be costs associated with ensuring that boreholes on the property supplied adequate water.

19 The executor points out, as set out below, that the agreement does not permit a reduction in the purchase price. It is unnecessary to decide this aspect. That is because the applicants' case in their founding papers is not for a reduction in the purchase price. Their case is for an amendment of the liquidation and distribution account. This amendment is not premised on an entitlement to a reduction in the purchase price.

20 I must mention that there is no sound basis for the Court, in any event, to order an amendment of the liquidation and distribution account based exclusively on quotations. There is no evidence that the quotations relied upon by the applicants reflect the true value of what the law, if a case is made, would permit as an appropriate amount that constitutes a claim against the estate and to be noted as such in the liquidation and distribution account. A court will not accept quotations as constituting a basis for a claim on their mere presentation.

21 The applicants, as detailed above, contend that they elected to uphold the agreement notwithstanding the misrepresentation. The applicants are thus bound by the terms of the agreement. They agreed to the following: that the

property was sold voetstoots[6], that they cannot seek a reduction in purchase price[7], that the agreement constituted the whole agreement and the parties are bound only by representations recorded in the agreement or on a duly signed addendum[8]; that any variation had to have been in writing and signed by the parties[9], and that the applicants confirmed that the transaction was not a result of direct marketing by the agent and that the applicants had sufficient time to consider the offer.[10]

22 The applicants do not address the terms of the agreement in their written submissions. Having elected to uphold the agreement, the applicants bound themselves to those terms. The applicants do not say why they contend for an entitlement to a reduction in the purchase price notwithstanding clause 8.2.3 of the agreement. They also do not say why they contend for a case founded on a misrepresentation notwithstanding clause 17 of the agreement.

23 The executor raised several preliminary objections. I consider that the failure to cite the executor is the more meritorious objection. The applicants sought leave to cite Mr Coetzee. They explained why he was not cited. I accept their application and grant leave for Mr Coetzee to be cited as a party.

24 I make the following order:

(1) Mr Phillip Coetzee N.O. is joined as a third respondent.

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[6] Clause 8.2.1.2
[7] Clause 8.2.3
[8] Clause 17
[9] Clause 17.3
[10] Clause 17.6

(2) The application is dismissed.

(3) The applicants are ordered to pay costs, including costs in the interlocutory proceedings. Costs are on scale B.

[redacted]

O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the applicants:	J H Lerm
Instructed by:	EW Serfontein Inc. Attorneys
Counsel for the 2nd and third respondents:	E Janse van Rensburg
Instructed by:	Nols Nolte Inc.
Date heard:	3 March 2026
Date of judgment:	29 April 2026