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REPUBLIC OF SOUTH AFRICA



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

Case Number: A37/2025
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED
DATE **2026-05-06**
SIGNATURE

In the matter between:

KEY RESULTS PROPERTIES (PTY) LTD

First Appellant

ERNEST PHILLIPUS BLIGNAUT

Second Appellant

and

MMAMABIRI LEAH KGOELE

First Respondent

THE REGISTRAR OF DEEDS PRETORIA

Second Respondent

SOUTH AFRICAN HOME LOANS GUARANTEE TRUST

Third Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 6 May 2026.

JUDGMENT

POTTERILL J

Introduction

[1] Mmamabiri Leah Kgoele [Kgoele] brought two applications against the appellants, Key Results Properties (Pty) Ltd, [Key Results] and Ernest Phillips Blignaut [Blignaut]. For ease of reference, I refer to both appellants as Key Results. The one application sought to set aside an eviction from the property described as Erf 1[...], T[...] Extension 1, Pretoria, Registration Division JR Province Gauteng [the Property] granted against Kgoele. The second was an application in terms of S6(1) and (2) of the Deeds Registry Act 47 of 1937 [the Act] seeking to set aside the registration of the Property in the name of Key Results, previously known as Money Box Inv 135 (Pty) Ltd and instructing the Registrar of Deeds to register the Property in the name of Kgoele. A further order sought was an order that all the agreements between Kgoele and Key Results were unlawful and void.

[2] By agreement between the parties both applications were argued simultaneously before the Court a quo. The Court entertained the application in terms of the Act first, reasoning that if that application was successful rescission of the eviction must per se follow. The Court granted both the applications.

[3] The Court dismissed an application for leave to appeal against the whole of the judgment and the orders granted. The appeal is before us pursuant to a successful petition to the Supreme Court of Appeal.

The common cause facts as background to the matter

[4] Kgoele and her late husband fell behind in their mortgage bond repayments on the Property. Due to this a forced execution sale of the property was imminent.

[5] Key Results, a property holding company, through its agents, approached Kgoele and concluded four agreements with Kgoele. It is common cause that the four agreements were signed by Kgoele and the signing of the agreements resulted in Kgoele not losing the property to a sale in execution. The Property was registered in the name of Key Results on 11 March 2008.

[6] Kgoele made monthly payments to Key Results from 1 September 2007 to 3 August 2013 totalling R331 600. The last payment was made in August 2013.

[7] *Ex facie* the documents the agreements had the following headings: Memorandum of Lease Contract Agreement [the Lease]; Offer to Purchase; Special Power of Attorney [SPOA] and a further Offer to Purchase. The lease agreement, offer to purchase and the SPOA were all signed on the 30 August 2007. *Ex facie* the other offer to purchase an offer made by Kgoele to Key Results to purchase the property was signed on 9 October 2009.

The Court a quo's judgment

[8] The Court found that Key Results made intentional fraudulent misrepresentations by "indeed lying" to the Kgoeles about the nature of the contracts concluded. Furthermore, the versions were assessed and Kgoele's version was found to be more "probable". Yet the Court found that there was no bona fide dispute of fact and was tasked with making a finding on law, not fact. The Court also granted the application against Blignaut while there was no cause of action against him in his personal capacity.

The Appellants' version

[9] It set out that as a property holding company it came to know of the predicament the Kgoele's found them in; to lose their property in execution. So as not to lose a place to stay they offered to purchase the property with the Kgoeles to lease the property. The offer to purchase the Property reflects that the purchaser is Eileen J de Wet or Nominee. The purchase price was paid to ABSA, the mortgage bond holder, to cancel the bond. The Property was transferred to Key Results and registered in its name on 11 March 2008. Jacques du Preez oversaw the transactions on behalf of Key Results. He confirmed same in a confirmatory affidavit.

Eileen de Wet or nominee could sign the agreement as provided therefore in Clause 1 of the agreement.

[10] Key Results offered the Kgoeles first option to buy back the property, if they so wished. They took up the offer in 2009 as reflected in the offer to purchase the Property. The Kgoeles could however not secure a mortgage bond for the purchase price. A second offer though their son failed for the same reason.

[11] Key Results denied that it loaned money to third parties but generated income as a property investor. There is no written loan agreement; Key Results is not a registered Credit provider and no agreement in terms of the NCA was concluded. A property lease agreement is not subject to the NCA.

[12] The Kgoeles had stopped paying the rent and it therefore launched the eviction application. The Kgoeles received letters of demand for the arrear rent for two years. The statements sent and received by the Kgoeles reflect rentals paid and received. Helena Sauerman's confirmatory affidavit set out that as an employee of Key Results she oversaw the renewal of the lease agreement after the expiry of the lease that was signed pursuant to the sale of the property. She confirmed that the Kgoeles attempted to buy back the property on two occasions.

The Kgoele version

[13] Kgoele was approached by agents of Key Results and they went to its office. They were told they would not lose their house if they repaid Key Results who would loan them the money. It is admitted that they signed the documents but submitted that they did not read the documents because of the turmoil of the pending sale of the property. They draw attention to the fact that only one witness signed the documents. The power of attorney was not commissioned, and Eileen de Wet signed the offer to purchase, not Key Results. They disputed that they nominated a Zelda person to buy their home or ever met a Jacques du Preez.

[14] It is submitted that the amount of R331 600 that they paid was the repayment of a loan agreement and the loan amount has been paid in full. They did not intend to lease their own property and seek the transfer of the property in Kgoele's name. They have been staying on the property for 20 years.

[15] It was submitted that they were defrauded because the purchase price was the total amount outstanding to ABSA, but this material term is not contained in the deed of sale, contrary to the Alienation of Land Act 68 of 1981. Key Results was as a result not a bona fide purchaser.

[16] A bald denial was made that they did not make use of the first option to buy the property back and did not explain the offer to purchase the property they signed.

[17] A bald denial was the response to the statement that for two years letters of demand for arrear rent were received by Kgoele.

Issues to be decided

[18] In deciding the appeal this Court must find that the Court a quo's finding and order was predicated on a material misdirection in law or fact. The judgment reflected that indeed there was a material misdirection in fact and law. In law the Court did not adhere to and apply the trite legal principle when adjudicating final relief sought in an opposed motion.¹ It made factual findings on disputed facts by considering credibility and probabilities. The principle was reiterated in *National Director of Public Prosecutions v Zuma*² as follows: "... that unless motion proceedings were concerned with interim relief, they were all about the resolution of legal issues based on common-cause facts. Unless the circumstances were special they could not be used to resolve factual issues because they were not designed to determine probabilities. It was well-established under the *Plascon-Evans* rule that where disputes of fact in motion proceedings arose on the affidavits, a final order could be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits and admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It might be different if the respondent's version consisted of bald or implausible denials, raised fictitious disputes of fact, or was palpably implausible, far-fetched or so clearly untenable that the court was justified in rejecting it merely on the papers." [footnotes omitted]

[19] This misdirection of the Court per se renders the appeal to be upheld. Consequently, this Court of Appeal must adjudicate whether the application to set

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 19843 (3) SA 623 (A)

² *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA)

aside the registration can be granted, must be dismissed or referred to trial or oral evidence and what the consequence of these orders will have on the rescission of the eviction application.

Argument on behalf of Key Results

[20] In a nutshell it was argued on behalf of the Key Results that upon a proper analysis there is no bona fide dispute of fact, put differently, the disputes of fact are not genuine bona fide disputes of fact and the application to set aside the registration must be dismissed. Furthermore, the factual dispute could have been foreseen long before the applications were instituted and on this basis the applications must be dismissed. Referring this matter to oral evidence will serve no purpose because the case put up by Key Results cannot be challenged through cross-examination, but in fact will only constitute a fishing expedition.

Argument on behalf of Kgoele

[21] The representative for Kgoele initially persisted with reliance on the judgment of the Court a quo, but it per se being bad in law, then argued that the matter must be referred to oral evidence. He argued there was a bona fide dispute of fact with regard to the lacunas in the contracts, that the purchaser was not reflected as Key Results and other parties signed the agreements. The evidence in the answering affidavit by Blignaut was hearsay evidence as Blignaut did not conclude the contracts with Kgoele. New points were raised pertaining to the purchase price not being specified and that Key Results had not been registered at the time the lease agreement was signed. He pleaded with the Court not to uphold the appeal because a great injustice would result.

Reasons for decision

[22] The Court a quo rejected the argument that there was a foreseen factual dispute rendering application proceedings inappropriate. It found there was no dispute of fact, only a dispute in law. This was a material misdirection; the founding, answering, and replying affidavits read together are rife with factual disputes. I mention only a few; did the Kgoele's consent to the selling of their Property; did they offer to buy the Property, were they leasing the property or paying off a loan? The

fact that the Property was registered in the name of Key Results since 2008 is a strong indicator [proof of ownership] that there would be a factual dispute when seeking to set aside the ownership registration. Pursuant to letters of demand for the arrear rent sent in 2017, the attorney for Kgoele raised that Kgoele is the owner of the Property. In response Key Results sent the title deed of the Property and the Lease agreement to Kgoele. Already at this stage a factual dispute should have been foreseen. A court could exercise its discretion to dismiss the application on this basis alone.

[23] Even more significant is that Kgoele relied in argument on fraudulent misrepresentations as the basis for the application. Obtaining an order on affidavit, based on fraud, is a big hurdle to overcome when considering the factors that need to be sustained on affidavit for a respondent's version not to be accepted. Relying on *Quartermark Investments (Pty) Ltd v Mkhwanazi and Another* (768/2012) [2013] ZASCA 150; [2014] 1 All SA 22 (SCA); 2014 (3) SA 96 (SCA) (1 November 2013) it was argued that despite the title deed the fraudulent misrepresentation was proven. The *Quartermark Investment* facts are remarkably similar to this matter. Quartermark is also a property holding company and had the title deed to the property of a Ms Mkhwanasi. She had asked for a loan as she fell in arrears with her bond and car payments. She later discovered that the property was registered in Quartermark's name. By means of application proceedings the registration of the property in Quartermark's name was set aside and the Supreme Court of Appeal dismissed the appeal against the order.

[24] The difference between the evidence contained in the affidavits of Quartermark and Key Results is that the averment of fraud was not denied in the Quartermark matter. Consequently, there was on the issue of fraud no dispute of fact and in terms of the *Plascon-Evans* principle Ms Mkhwanasi's evidence had to be accepted. Moreover, an affidavit by an employee of Quartermark setting out that they were instructed to lie to clients about the content of the documents they were signing was in the papers before the Court. In the matter at hand Kgoele never stated that she was misled, she simply stated that she did not read the documents. As for the implication of fraud, this is expressly denied by Key Results and this Court cannot reject the version of Key Results as consisting of bald or uncreditworthy denials or

being palpably implausible, far-fetched or so clearly untenable that it can be rejected merely on the papers.

[25] In this matter there is a factual dispute and from the outset the matter should have been referred to oral evidence or to trial. During the hearing Kgoele's representative could have asked for a referral and even at the appeal stage this could have been sought. Just as some of the contracts might need clarification, Kgoele will have to explain her silence on her offer to buy back the Property and her understanding of the demands for arrear rent. However, this Court must still determine whether the dispute of fact is a genuine bona fide dispute of fact.

Is the dispute a genuine bona fide dispute of fact?

[26] It is common cause that Kgoele is not an illiterate person, nor a person who had not contracted before, nor never contracted to purchase, or did not know what a mortgage bond was. In view of the above common cause facts the version of Key Results must be accepted that she willingly signed the contracts knowing what the contracts are. Furthermore, there is no evidence to as why, if she was only signing a loan agreement, she was happy to sign a variety of contracts.

[27] No evidence is provided as to what the loan entailed; for what amount the loan was, over what period it would be paid off, what the monthly instalments would amount to and what interest rate was applicable. She submitted that the house was security for the loan. It could only serve as security for the loan if it was registered in the name of Key Results, which it was, thus not making her the true owner as she avers. The fact stated by Key Results that it is the registered owner must thus be accepted.

[28] It is common cause that the monthly instalments increased which Kgoele paid. She does not explain why she never questioned this increase or why it was referred to as rentals. She baldly denied that she received such statements whereas an explanation is required leaving the version of Key Results to be accepted. In Kgoele's affidavits much is made of the fact that she never signed any lease agreement and the lease agreement is invalid. However, in a letter by her attorney to Key Results dated 14 February 2014 the following is as per the instructions of Kgoele recorded "You then entered into a twelve (12) months lease agreement on

the 30th August 2007 with our client for rental of the property...” This is the lease agreement Key Results is relying on and its version is thus not untenable or far-fetched. It would also imply that she knew she signed a lease agreement. Kgoele later averred it was only a loan agreement, not a loan agreement after the expiry of the lease agreement as set out further in this letter.

[29] There is a signed offer to purchase the Property by Kgoele to Key Results dated 9 October 2009. A bald denial is made that she did not make such offer. She baldly denied that her son made a further offer to purchase the Property and that in both instances she could not obtain a mortgage bond. The signed offer required a full explanation from Kgoele and the version of the Key Results as confirmed by Du Preez and Sauerman must be accepted.

[30] Mr Blignaut’s evidence pertaining to how the contracts were concluded is confirmed by Du Preez and did not constitute hearsay evidence.

[31] Although a new point can be raised on appeal there is a proviso that the point was covered by the pleadings and its consideration on appeal involved no unfairness to the party against whom it is directed. The issue raised that Key Results was only incorporated on 11 September 2007 and the documents were already signed on 30 August 2007 can arguably be found to flow from the documents attached, but this was not the basis raised for any fraudulent transactions. Pre-incorporation transactions do not nullify a contract if there was catered for a nomination, which the sale agreement did. This new matter does thus not raise a dispute of fact, but more importantly Key Results had no opportunity to by means of affidavit address this newfound issue.

[32] It is indeed true that this Court cannot lose sight of the fact that Kgoele has lived in this Property for 20 years and has made payments to stay there no matter the basis for the payments. But, the converse is also true, the Property has been registered in the name of Key Results since October 2008 and an adverse effect, depending on the order, can result to either party.

[33] On these common cause facts that raise no bona fide factual dispute, referring the matter to trial 20 years later, would not be in the interests of justice.

[34] If the registration in the name of Key Results is not set aside then it follows that Kgoele has no right to be in the property if not paying rent and consequently the setting aside of the eviction order must be dismissed.

Costs

[35] I can see no reason why the costs should not follow the result. Due to the complexity of the matter I am satisfied that two counsel were necessary and costs for one counsel is granted on scale C and for the other counsel on scale B.

[36] Order

[36.1] The Appeal is upheld and the respondent is to carry the costs, including the costs of two counsel on respectively scale C and B.

[36.2] The Application in terms of S6(1) and (2) of the Deeds Registry Act 47 of 1937 seeking to set aside the registration of the Property in the name of Key Results is dismissed with costs.

[36.3] The application sought to set aside an eviction from the property described as Erf 1[...], T[...] Extension 1, Pretoria, Registration Division JR Province Gauteng is dismissed with costs.

S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree

**N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I agree

**S.N.I. MOKOSE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

CASE NO: A37/2025

HEARD ON: 4 March 2026

FOR THE APPELLANTS: ADV. M. LOUW

INSTRUCTED BY: Jaco Roos Attorneys Inc.

FOR THE FIRST RESPONDENT: MR. S.N. MOLELE
MR. M.F. SENOKO

INSTRUCTED BY: Frank Senoko Attorneys

DATE OF JUDGMENT: 6 May 2026

