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REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024-101072

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE 25 May 2026
SIGNATURE

In the matter between:

TSHEMA HOLDINGS (PTY) LTD

Applicant

and

**MARIE VICTOR ATTORNEYS
AND CONVEYANCERS**

Respondent

JUDGMENT

PILLAY, AJ

INTRODUCTION

[1] This is an interlocutory application, in terms of rule 10 of the uniform rules of court, in which the applicant seeks the joinder of the respondent as a defendant in the action proceedings.

SALIENT FACTS

- [2] This matter emanates from a property development transaction pertaining to a partially developed property that was further developed and sold. The property is described as:

“ERF 4[...] D[...], Extension 42 Township, Registration Division JR, Province of Gauteng, measuring 4802 square meters held by deed of transfer T12190/2017 (“the property”).

- [3] The alleged details of the property development transaction and subsequent sales are set out at paragraphs 13 to 17 of the amended particulars of claim, dated 20 November 2024 (*“the amended particulars of claim”*).
- [4] It is common cause that the property was owned by KMaluks (Pty) Ltd (*“KMaluks”*). The applicant alleges that KMaluks sold the property to the applicant (*“the first sale”*) and that prior to the property being transferred to the applicant, it was sold (*“the second sale”*) and transferred to a third party, Moche Holdings (Pty) Ltd (*“Moche”*).
- [5] The applicant alleges further that the property was partially developed by KMaluks and in the intervening period, the applicant paid various amounts, totalling just over R 4 million to KMaluks to complete the development and sell the developed units for a profit. The applicant alleges that at a later stage, after the development had been completed, the applicant purchased the property in full. As stated above, the applicant contends that the property was transferred to KMaluks instead of the applicant.
- [6] The applicant instituted action proceedings in which it cited six defendants. The first defendant is KMaluks while the second defendant is the respondent. The third defendant is Moche and the fourth defendant is the Registrar of Deeds, Pretoria. The fifth defendant is New Dawn Developers (Pty) Ltd, the joint venture allegedly formed and the sixth and seventh defendants are the representatives of KMaluks.

[7] In terms of the amended particulars of claim, the applicant seeks the following relief:

CLAIM A: JOINT VENTURE AGREEMENT

1. *The first defendant is ordered to pay the plaintiff the value of the property, less the costs of construction and renovation of Units 1 and 2 known as scheme KMaluks Manor, together with interest at 11.75% per annum.*
2. *The third defendant is ordered to provide the actual costs of construction and/or renovation on the property, three (3) months after the date of this order.*
3. *The plaintiff and the first defendant are ordered to compile an account and debatement of the amount as per prayer 1 to be paid to the plaintiff.*

ALTERNATIVE CLAIM: PURCHASE AGREEMENT

4. *The sale of the property to the third defendant to be declared void ab initio.*
5. *The fourth defendant is ordered to transfer the property into the names of the plaintiff within three (3) months of the date of the order subject to the payment of any outstanding amounts in terms of the purchase agreement.*

FURTHER ALTERNATIVE TO CLAIM

6. *The joint venture and purchase agreements are hereby cancelled.*
7. *The first defendant is ordered to return all contributions made by the plaintiff in terms of the joint venture and purchase agreements in the amount of R 6,692,950.00 plus interest at a rate of 11.75% per annum.*

[8] The matter is opposed by the various defendants and their pleas have been delivered. It is not necessary to deal with either the merits of the claim or the merits of the respected defences that have been pleaded.

THE ISSUE FOR DETERMINATION

[9] The issue for determination is: Whether the respondent should be joined as a defendant in the action proceedings.

THE LAW

[10] Our Courts have drawn a distinction between a joinder of necessity and a joinder of convenience. In *Judicial Services Commission and Another v Cape Bar Council and Another*, the Supreme Court of Appeal stated:

“It has by now become settled law that the joinder of a party is only required as a matter of necessity — as opposed to a matter of convenience — if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings..... The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one.”¹ (Emphasis added)

[11] The test for joinder is whether or not a party has a ‘direct and substantial interest’ in the subject matter of the action, that is, a legal interest in the subject matter of the litigation which may be affected prejudicially by the judgment of the court.²

[12] In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*, the Constitutional Court held that:

“Generally, a party must be joined in proceedings if it has a direct and substantial interest in any order the court might make, or when an order cannot be effected without prejudicing it.”³

[13] A direct and substantial interest means an interest in the subject-matter of the litigation, not a mere financial or academic interest.⁴

[14] The rule is that any person is a necessary party and should be joined if such person has a direct and substantial interest in any order the court might make, or if such an order cannot be sustained or carried into effect without prejudicing that party, unless the court is satisfied that he has waived his right to be joined.

¹ *Judicial Services Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA) at para 12

² *Henri Viljoen (Pty) Ltd v Awerbuch Bros* 1953 (2) SA 151 (O) at 168-170

³ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) at para 44

⁴ *MV Smart: Minmetals Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another* 2025 (1) SA 392 (SCA) at para 14

[15] Specifically, a court must consider whether the relief sought will adversely affect a party, as set out in *Myeni v Organisation Undoing Tax Abuse NPC and Others*:

"[64] However, for purposes of this application the Court will approach the matter on the basis of non-joinder. Non-joinder arises where another party has a direct and substantial interest in the matter, which is determined by the relief that is sought. A party can only be said to have a direct and substantial interest in the matter if the relief cannot be sustained and carried into effect without prejudicing their interests.

[65] In Amalgamated Engineering Union, the Appellate Division explained further that "[t]he question of joinder should ... not depend on the nature of the subject-matter of the suit ... but... on the manner in which, and the extent to which, the Court's order may affect the interests of third parties."

[66] This means that the relief is decisive, not the facts or issues in dispute. Even where a Court may be called on to make findings that are adverse to another party this does not establish grounds for non-joinder if the relief sought does not adversely impact on that party's interests.⁵ (Footnotes Omitted)

ANALYSIS

[16] It is well established that the test for joinder is whether a party has a direct and substantial interest in the relief sought. Two important considerations are whether the grant of the relief will prejudice the party sought to be joined or if the relief cannot be given effect to without a party. If the answer is in the affirmative for either of these considerations, the party must be joined. Accordingly, it is necessary to consider each of the claims.

Claim A

[17] The relief sought in Claim A is specifically aimed at two parties, namely; K Maluks and Moche.

[18] In respect of KMaluks, the applicant seeks repayment of the value of the property, less the construction and renovation costs of two units. The applicant

⁵ *Myeni v Organisation Undoing Tax Abuse NPC and Others* 2019 JDR 2599 (GP) at para 64-66

also seeks relief that KMaluks compiles a debatement of account in respect of these costs.

[19] In respect of Moche, the applicant seeks an order directing Moche to disclose the actual cost of construction and /or renovation to the property.

[20] It is clear that the relief sought in Claim A is not directed at the respondent, nor can it be said that the respondent is a necessary party to carry out the relief, in the event that the applicant is successful in Claim A. Therefore, the respondent does not have a direct and substantial interest in respect of Claim A.

Alternative Claim

[21] The applicant's claim in the alternative, is for declaratory relief and the transfer of the property to the applicant. It is alleged that KMaluks sold the property to the applicant, and that although the applicant paid KMaluks for the property it was sold and transferred to Moche, as opposed to being transferred to the applicant.

[22] From the Deed of Transfer, attached as annexure MV1 to the answering affidavit, it appears that an unknown party, named Molefe Arthur Mabalane ("**Mr. Malabane**"), was granted a power of attorney by KMaluks to appear before Registrar of Deeds to transfer the the property to Moche, at the behest of KMaluks. This aspect is not disputed (or even addressed) by the applicant in the replying affidavit. Accordingly, while the respondent was initially authorised to transfer the property, this act was done by Mr. Malabane, acting on the instructions of KMaluks.

[23] Although it is alleged that the applicant made payments to the respondent in respect of the purchase of the property, these funds were held in trust on behalf of KMaluks.

[24] The declaratory relief and the transfer that is sought are correctly directed at KMaluks, Moche and the Registrar of Deeds. As the conveyancing attorney that was initially authorised in the agreements to transfer the property, but did not

do so, the respondent does not have a direct and substantial interest in the relief sought in the Alternative Claim, and will not be prejudiced if it is granted. Nor is the respondent a necessary party for the transfer to be carried out, if the applicant is successful in the Alternative Claim.

Further Alternative Claim

[25] In the Further Alternative Claim, the applicant seeks cancellation of the joint venture and purchase agreements. The respondent was not a party to either of these agreements.

[26] The applicant also seeks an order directing KMaluks to repay an amount of R 6,692,950.00, which it alleges are contributions that it paid to KMaluks in terms of the respective agreements. If the applicant is successful, the obligation to repay the applicant is on KMaluks and not the respondent. Any payments that may have been received by the respondent, was received on behalf of KMaluks and was held in trust on behalf of KMaluks.

[27] Similarly, this relief is not directed at the respondent, and the respondent has no direct and substantial interest.

RULING

[28] Although the respondent has disputed that it was validly cited and further disputed that service was properly effected, in light of the conclusion that I reach, it is not necessary to deal with these aspects.

[29] In the circumstances, I am of the view that the applicant has failed to make out a case that the respondent should be joined as a party to the action proceedings.

ORDER

[30] The late filing of the applicant's replying affidavit be and is hereby condoned.

[31] The interlocutory application for joinder is dismissed with costs.

K PILLAY
ACTING JUDGE OF THE HIGH COURT
PRETORIA

For the Applicant:

ADV. MS. MANGANYE instructed by
WEAVIND AND WEAVIND

For the Respondent:

ADV. NC HARTMAN instructed by
VOSTER BRANDT INCORPORATED