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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-119314

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO

05 JUNE 2026 _____
DATE SIGNATURE

In the matter between:

HENDRIE ANDRIES MARAIS N.O. First Plaintiff

DINNAH JOHANNA STOLS Second Plaintiff

And

ANNAMARIE LORETO First Defendant

JOSE LORETO Second Defendant

JUDGMENT

MVUBU, AJ

Introduction

[1] This is an opposed application for summary judgment. The Executor of the First Defendant's late father's estate (the First Plaintiff) and her mother (the Second Plaintiff) seek to make recovery from her (and the Second Defendant), of alleged outstanding rental. The matter is simply a family law dispute.

[2] Summary judgment proceedings are not competent for resolving what is a clearly family dispute, of deep and rooted import. One would run the risk of closing out one family member without the opportunity of presenting the full evidence and permitting discovery to offer much needed insight.

[3] Greater than the foregoing, the various versions need to be subjected to scrutiny and a court, having the benefit of all the evidence, assesses the evidence and arrive at a conclusion justified by the prevailing circumstances.

[4] Summary judgment proceedings ought not be used to steal a march.

Background facts

[5] The Plaintiffs instituted action proceedings in terms of which the following relief is sought in the combined summons:

> *"**WHEREFORE** the plaintiffs claim:*
> *'1. Payment of the sum of **R214 979.28**.*
> *2. Interest thereon a tempore morae at the rate of 11.75% per annum.*
> *3. Costs of suit.*
> *4. Further and/or alternative relief."*

[6] In its particulars of claim, the Plaintiffs allege that the relief stems from a lease agreement, best defined as follows:

> *"7. The deceased and the Second Plaintiff are the registered owners of immovable property situated at 4[…] P[…] J[…] Street, M[…], Krugersdorp ("the property").*
> *8. During or about 2014 and at Krugersdorp the Second Plaintiff and the deceased concluded an oral agreement of lease ("the agreement") with the First and Second Defendants. The parties of the agreement all acted personally.*
> *9. The express alternatively implied, further alternatively tacit terms of the agreement of lease are as follows:*
> *9.1 The Defendants would rent the property from the Second Plaintiff and the deceased for occupation by the Defendants and their son, BRANDON.*

> *9.2 The lease agreement be terminable upon the giving of one month's notice.*
> *9.3 The rental would be equal to the monthly instalment payable to Standard Bank in respect of account number: 363767185 and shall be paid by no later than the last day of each month.*
> *…*
> *11. In breach of the terms of the agreement, the Defendants have since January 2023 failed to pay the agreed rental. The rental payable since January 2023 until September 2024 in the sum of R204 082.94 is set out in the schedule annexed hereto, marked "**POC1**"."*

[7] Save to admit an agreement, the Defendants deny that the agreement was a lease agreement as alleged. In their plea, they allege the following, I summarise:

7.1. The deceased and the Second Plaintiff are the First Defendant's parents. The Second Plaintiff being her mother and the deceased her late father.

7.2. There were 4 (four) children born of the union between the deceased and the Second Plaintiff.

7.3. The deceased had a successful business incorporated as a Close Corporation under the name "Rudi Scrap Metal CC" and in which the deceased and the four (4) children were members of Rudi Scrap Metal CC.

7.4. The deceased together with the Second Plaintiff (married in community of property) decided to implement a succession plan. In that plan,

7.4.1. the deceased offered to sell his business to their son Petrus Stols and when he declined the offer, the business was "sold" to their daughter Valerie De Mendoca.

7.4.2. With Valerie De Mendoca taking over the business, the other 3 (three) children had to resign as members of Rudi Scrap Metal CC. They did.

7.4.3. Following her (the First Defendant) resignation, it was agreed that – as pleaded in paragraphs 13, 14 and 15 of their plea:

> *"[13] …with the agreement, between the deceased and the Second Plaintiff that the First Defendant would become the owner of the immovable property, Erf 3[…] M[…] Township Registration Division I.Q. Gauteng Province held by Deed of Title T[…], also known as 4[…] P[…] J[…] Street, Krugersdorp.*
> *[14] The conditions were that the First Defendant would pay the bond during the lifetime of the deceased, the insurance policy settling the bond when the deceased would pass away whereafter the First Defendant could take transfer of the immovable property.*
> *[15] The Deceased and Second Plaintiff attested to a last will and testament dated and signed 22 April 2014 that the loan by Valerie would be bequeath to Valerie and the immoveable property, Erf 3[…] M[…] Township Registration Division I.Q. Gauteng Province held by Deed of Title T[…], also known as 4[…] P[…] J[…] Street to the First Defendant."*

7.5. The relevant insurance policy, referred to in the quoted passages, is enclosed as well as the Last Wills and Testaments of the deceased and the Second Plaintiff.

7.6. It is the Defendants' version that the intention of the deceased and the Second Plaintiff was to pass title of Erf 3[…] M[…] Township Registration Division I.Q. Gauteng Province held by Deed of Title T[…], also known as 4[…] P[…] J[…] Street to the First Defendant. Consistent with this version, it was not meant to be a lease agreement. They say that it was for this reason that they effected improvements upon the property – they claim for these improvements in their counterclaim.

7.7. That, transfer of the property, was to be done as follows:

7.7.1. The First Defendant (and/or together with her husband, the Second Defendant but the obligation laid with the First Defendant) would make bond payments to the Standard Bank, account number 363767185. The payments were, as I have it, made to Standard Bank via Rudi Scrap Metals CC and never to the deceased and the Second Plaintiff. This much is common cause as is reflected in the judgement of ***Marais N.O v Loreto and Others*** (2024/115982) [2025] ZAGPJHC 1078 (21 October 2025) wherein at paragraphs 9, 10 and 11 it is recorded:

> *"[9] The applicants aver that the first and second respondents had agreed with Stols and the deceased that the respondents may occupy the property on condition that they pay an amount equivalent to the bond instalment being paid on the property to Standard Bank.*
> *[10] The bond instalment is paid from the banking account of Rudi Scraps Metals CC ("Rudi Scraps Metals CC"). The first and second respondents made payment of the agreed amount into the banking account of Rudi Scrap Metals until December 2022.*
> *[11] Since December 2022 no further payment had been made by the respondents to the banking account of Rudi Scrap Metals. Instead, the respondents elected from that day onwards to pay the agreed amount into the trust account of their attorney."*

7.7.2. On the passing of the deceased, the insurance payout would be used to cover the remaining bond repayments and settle the liability. On the Defendants' version, that would mark an end to their obligations to pay towards the property.

7.8. The relevant portions of the deceased and Second Plaintiff's joint Last Will and Testament dated 22 April 2014 reads:

> *"[2.2.1.] Ons bemaak ons residensiele vaste eiendom, tesame met al ons meubels, huishoudelike toebehore en persoonlike*

effekte (motorvoertuie uitgesluit) daarin gevind, aan ons dogter ANNEMARIE LORETO."

7.9. It was explained during submissions that the property, at that stage was their residential property and hence it is so reflected in the Joint Will. The family had lived at the property and had since moved out leaving the Defendants in occupation.

7.10. The deceased died in October 2019. In March 2022, the Second Plaintiff attested to a Last Will and Testament dated 26 March 2022 and wherein she attested as follows:

"3.2 I specifically bequeath my residential property situated at 4[…] P[…] J[…]t Lane, M[…], Krugersdorp; all household content and my vehicle as follows:
3.2.1. 100% to my daughter, Annemarie Stols, born 1982"

7.11. Annemarie Stols and Annemarie Loreto being the same person – Stols is her maiden name, whereas Loreto is her marital name. This is common cause.

7.12. The Last Will and Testament of the Second Plaintiff dated 26 March 2022 was preceded by her Last Will and Testament dated 12 November 2019 – a month after the passing of the deceased and wherein she attested:

"3.1 Ek bemaak my huis, gelee te Piet Jourbetstraat 4[…], M[…], Krugersdorp, aan my dokter Annemarie Loreto ((1/2)) een halwe aandeel van hierdie eiendom is onderhewig ann die bepalings van die testament van my oorlede eggenoot, Jan Johannes Stols, geteken te Krugersdorp op 28 November 2015. 'n Afskrif van sy testament word hierby aangeheg as aanhangsels "A""

7.13. As I read, at least one half of the property "belongs" to the First Defendant – that half was given her by her late father in his Last Will and Testament dated 28 November 2015.

7.14. That is sufficient to raise a dispute, at least in relation to the transfer of the ½ (half) portion of the property, to the First Defendant flowing from the passing of the deceased. That there should be transfer in terms of the law of succession accords with the Defendants' version. It is enough to show that the Defendants' version is not without merit.

[8] For purposes of summary judgment, I accept the averments contained in the plea are correct and having so accepted, determine whether the defence raised is "bona fide" and that the nature as well as grounds of the defence have been fully disclosed.

LEGAL PRINCIPLES AND ANALYSIS OF DEFENCE

[9] The defence is clearly bona fide, in my view. I also find that the said defence's nature and grounds have been fully disclosed, as accompanied by the material facts relied upon therefor, in compliance with the Rule 32(3)(b) requirements.[1]

[10] It is trite that the Defendants need not prove their defence but merely comply with Rule 32(3)(b). That they have done. In this regard, as long as the affidavit resisting summary judgment demonstrates merits in the defence, the defence is bona fide.[2] Below, as foreshadowed above, it will be illustrated that the defence is indeed one with merits.

[11] The legal position, as we know, is that it will be sufficient if the defendant swears to a defence, valid in law, in a manner which is not inherently or seriously unconvincing.[3] As was held in ***South African Securitisation Programme (RF) LTD and Others v Cellsecure Monitoring and Response (PTY) Ltd and Others***

> *"[33] I am mindful that a bona fide defence is assessed upon a consideration of the extent to which the nature and grounds of the defence and the material facts relied upon have been*

[1] ***Maharaj v Barclays National Bank Ltd*** 1976 (1) SA 418(A).
[2] ***He & She Investments (Pty) Ltd v Brand NO*** 2019 (5) SA 492 (WCC).
[3] ***NBS Boland Bank v One Berg River Drive and Others, Deeb and Another v ABSA Bank Ltd; Friedman v Standard Bank of South Africa Ltd*** (291/98, 428/98, 85/99) [1999] ZASCA 60; [1999] 4 All SA 183 (A); 1999 (4) SA 928 (SCA) (10 September 1999) paragraphs 33-35.

> *canvassed. Bona fides does not mean that the defendant has to satisfy the court that his version is believed to be true. All the defendant is required to do is to swear to a defence valid in law, in a manner which is not seriously unconvincing. Put differently, he should show that there is a reasonable possibility that the defence he advances may succeed on trial."*[4]

[12] The Plaintiffs argue that the Defendants rely on an oral agreement support a claim that they would eventually be entitled to transfer of the property. They say, the only oral agreement was the oral lease agreement. Any suggestion that the property would be transferred pursuant to an oral agreement, is unsustainable and bad in law because it violates section 2(1) of the Alienation of Land Act, 1981 as amended.

[13] The argument that the defence falls foul of the section 2(1) of the Alienation of Land Act, 1981 as amended, is without merit. The property is clearly dealt with in terms of testamentary instruments. All of these instruments make it plain that the property is earmarked – at least the remaining 50% - to the First Defendant.

[14] I was referred to this Court decision in ***Marais N.O v Loreto and Others*** wherein this Court found that:

> "[20.2] any claim to an agreement regarding the property would be subject to section 2(1) of the Alienation of the Land Act, 68 of 1981 ("the Act") which provides as follows:
> *"2(1) <u>No alienation</u> of land after the commencement of this act shall, subject to the provisions of section 28, be of any force or effect <u>unless it is contained in a deed of alienation signed by the parties</u> thereto or by their agents acting on their written authority."* (Own emphases)
> "Alienate" is defined in Section 1 of the Act as follows:
> *"'Alienate', in relation to land, <u>means sell, exchange or donate, irrespective of whether such sale, exchange or donation is</u>*

[4] ***South African Securitisation Programme (RF) LTD and Others v Cellsecure Monitoring and Response (PTY) Ltd and Others*** (21647/2021) [2022] ZAGPPHC 925 (25 November 2022) paragraph 33.

> *subject to a suspensive or resolution condition, and 'Alienation' has a corresponding meaning;"* (Own emphases)
>
> Thus, in the absence of the alleged agreement being contained in a deed of alienation signed by all the parties, the agreement relied upon by the first respondent is of no force and effect. In *Hohl N.O. and Others v Dalcos and Others* (38224/2020) [2022] ZAGPJHC 34 (11 February 2022) the court in very similar circumstances held:
>
> "*[8] The first respondent also makes the claim that, during 2008, he concluded an oral agreement with the deceased in terms of which the property would be subdivided and he would acquire a portion of the property. Pending his acquisition of the property, he and his family would be allowed to occupy rent-free a new house, which the deceased and presumably the first applicant had agreed to erect on the property for him and his family. This claim is denied by the first applicant. I need not dwell on this factual dispute too long, for the simple reason that the claim is not only bad in law but is also so far-fetched, if regard is had to the other undisputed facts in the matter, that it can be rejected out of hand.*
>
> *[9] The claim is bad in law because of section 2(1) of the Alienation of Land Act, Act 68 of 1981, which provides as follows:… '*
>
> *[10] The oral agreement, as alleged by the first respondent, is therefore of no force and effect..."* (Own emphases)"

[15] I am not aware whether the Last Wills and Testaments were placed before the Court. In the matter before me, the said Last Wills and Testaments were placed as part of the evidence to be considered. In my mind, the Last Wills and Testament move the nature of the "oral" agreement. That is, I am able to work out that there may have been an oral agreement for the First Defendant (and through her, her husband, being the Second Defendant) to take occupation of the property. That there was to be transfer of the property to the First Defendant, is not merely "oral" but also in writing as reflected in the Last Wills and Testaments quoted above. The explanation given by the

Defendants for this position is, in my view, clear and is inherently and seriously convincing.

[16] The arguments advanced before Justice Esterhuizen in ***Marais N.O v Loreto and Others*** is not the same argument advanced by the Defendants in this case. In fact, Mr Mostert (for the Defendants) made it plain that he was not pursuing the same argument, which Justice Esterhuizen had dismissed. As such the issue does not fall foul of the *res judicata* principle.

[17] Whatever "oral" agreement may have been, the following is uncontroverted and forms part of the inherently and seriously convincing version that:

17.1. There was a family meeting. At the meeting the First Defendant was to take occupation and pay towards the Standard Bank bond repayments. Which repayments would cease upon the settlement of the bond by the life insurance policy taken out by the deceased. No payments would be made to the deceased or the Second Plaintiff but to Rudi Scrap Metals, then under the control of the deceased.

17.2. There is no allegation that there was no life policy nor is there an allegation that even if there was a life policy, it did not settle the debt. Whereas the Defendants say any obligation to pay would cease after settlement of the bond using the proceeds of the insurance payout. I would imagine that, approximately 7 (seven) years after the passing of the deceased, a claim must have been made to the insurance in question and there was a payout. It remains to be determined whether, as alleged by the Defendants, the payout was in fact used to settle the bond with Standard Bank.

17.3. There is no allegation that Standard Bank is owed any monies and ergo, the Plaintiffs are "coming after" the Defendants for that debt. This may accord with the Defendants' version that the proceeds of the life cover payout were used as alleged by them. If that part is true, it may yet be that the other parts could stand scrutiny, and they ought to be afforded that opportunity. Referring the matter to trial will iron out all these issues.

17.4. Further, it is not as if the Defendants are malicious. To the extent that this dispute arose, to demonstrate their *bona fides* (not the bona fides of their defence), they have continued making payment of the amount alleged to have been rental into the trust account of their attorney. If it is proved that rental was indeed due and ought to have been paid – that is, the Plaintiffs are successful in their action, those funds are with the Defendants' attorney.

17.5. Added to that, the Defendants aver that Rudi Scrap Metals is under Valerie De Mendoca's control not the Plaintiffs. This seems to accord with the facts alleged by the Defendants – at least the First Defendant. I cannot, then, dismiss the alleged agreement, as the Defendants plead, at summary judgment stage. Also added to that, the rental would not have been received by the Plaintiffs, in any event. Why are they entitled to it, now – assuming there was rental as alleged by the Plaintiffs.

17.6. There is no indication, as far as I could establish, that the Second Plaintiff had any interest in Rudi Scrap Metals CC and there is no indication that she would have been entitled to receive "rental". This matter raises more questions than it offers answers. A trial would ensure that to the questions that arise, answers are provided.

17.7. However, what is clear is that to reflect the agreement, the deceased and Second Plaintiff attested to various testamentary instruments in terms of which the "intention" to transfer the property to the First Defendant was made manifest. The testamentary instruments are in writing and not "oral' and ergo, the "oral agreement" was reduced to writing and that would render it compliant with the Alienation of Land Act, 1981. That is, the property – on the Defendants' version – would be alienated pursuant to laws governing succession and, in this regard, transfer would take place and be effected in accordance with the terms of a written valid will.

17.8. The Second Plaintiff's Last Will and Testament of November 2019 makes it plain that – on her (the Second Plaintiff) understanding – that

one half of the property was to be transferred to the First Defendant in terms of the deceased's wishes, and she would transfer her half of the property, at her death. I do not read her will of November 2019 to suggest that – at the time, a month after the death of the deceased – she inherited the 50% share of her late husband. She was under the impression that her late husband bequeathed his 50% share in the property to the First Defendant. She was then, in turn, disposing of her 50% share.

17.9. In the result, at least one half of the property stands to be transferred to the First Defendant in terms of a written testamentary instrument alienating the land. There can be no oral agreement alienating land, to speak off.

[18] Simply, then, there does not appear to be any intention to lease the property as alleged by the Plaintiffs. According to the Defendants, the intention was for the property to pass to the First Defendant and as part of succession.

[19] To be clear:

19.1. The lease is disputed. The Plaintiffs must then prove the existence of this alleged lease. I am not persuaded, given the family-oriented context, that the Defendants' version is so inherently or seriously unconvincing that it stands to be rejected.

19.2. The payments are similarly disputed, in so far as they were intended to be rental payments. The Defendants aver that they were payments for purposes of keeping and maintaining bond repayments and which bond repayments would end upon the deceased policy paying out and the property being settled using funds from the payout. Again, given the family-oriented context, it is difficult to look past the Defendants' explanations, they are convincing.

Costs

[20] In the totality of circumstances, and given the family-oriented context involved in this matter, it was rather opportunistic of the Plaintiffs to seek

summary judgment. The dispute is clear and the explanation why the dispute ought to be resolved at trial even clearer.

[21] Added to that, there are counterclaims to the action. I am not persuaded that the counterclaims are without merit and in my view, the relief sought in the main action cannot be resolved independently of the counterclaims. The disputes are intricately linked.

[22] I am inclined to granting costs in favour of the Defendants on scale C.

Conclusion

[23] It follows that summary judgment stands to be refused and the Defendants are granted leave to defend, with costs on scale C.

[24] One last matter to mention, both parties sought condonation in respect of filings in the summary judgment proceedings. I granted condonation with no orders as to costs in relation to the condonation applications.

Order

[25] In the result, then, I make the following order:

1. The Plaintiffs' failure to comply with Rule 32(2)(a) is condoned, the Defendants' late filing of their opposing affidavits in the condonation application as well as application for summary judgment are condoned with no orders as to costs in relation to the condonation applications.
2. Summary judgment is refused and the Defendants are granted leave to defend the action.
3. The Plaintiffs, jointly and severally with the one paying and the other being absolved, are ordered to pay the costs of the summary judgment application on scale C.

_____

K. MVUBU

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Court Online. The date for hand-down is deemed to be 05 June 2026.

Date of Hearing	:02 June 2026
Date of Judgement	:05 June 2026
For the Plaintiff	:Adv. M.A. Kruger
Instructed by	:Scholtz Inc.
For the Defendant	:Adv Mostert
Instructed by	:Kapp Attorneys Inc