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**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: 2030/2024

In the matter between:

V[...] A[...] L[...] R[...]

Applicant

and

J[...] L[...] R[...]

1st Respondent

THE SHERIFF OF THE HIGH COURT, UPINGTON

2nd Respondent

Neutral citation: *V[...] A[...] L[...] R[...] v J[...] L[...] R[...] and Another (2030/2024)*
12 June 2026.

Coram: Tyuthuza AJ.

Heard: 21 November 2025.

Delivered: 12 June 2026.

Summary: *Specific performance – Deed of sale of immovable property – Whether deed of sale could be concluded despite existing settlement order – Whether deed of sale also concluded under duress and misrepresentation – Whether applicant entitled to seek compliance with the terms of deed of sale – Having failed to fulfil her reciprocal obligations – Application dismissed.*

ORDER

1. The application is dismissed with costs on a party and party scale including counsel's fees on Scale B.
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JUDGMENT

Tyuthuza AJ

Introduction

- [1] The applicant seeks a final mandatory interdict to compel the first respondent to sign all relevant documents and take all necessary steps to effect the transfer of the immovable property situated at 1[...] B[...] Street, Upington, Northern Cape (the immovable property), into the name of the applicant within 7 days from the date of this Court's order; failing which, the second respondent be authorised to sign the necessary documents and take the necessary steps to effect the transfer of the immovable property into the applicant's name. the applicant also seeks costs against the first respondent, on an attorney and client scale.
- [2] The applicant is a major female self-employed housewife, currently residing at 1[...] B[...] Street, Upington, Northern Cape. The first respondent is J[...] L[...] R[...], a policeman, currently residing at 1[...] J[...] street, Die Rand, Upington, Northern Cape. The second respondent is the Sherriff of the district of Gordonia, with his main place of business situate at 8[...] A[...] Road, Upington, Northern Cape. The second respondent is joined herein insofar as he/she may have to execute the order sought, in the event that the first respondent does not comply with prayer 1 of the notice of motion.

[3] It is common cause that the applicant (plaintiff *a quo*) and the first respondent (defendant *a quo*) were married to each other in community of property before divorcing on 07 July 2022. It is also so that prior to the final decree of divorce, on 17 May 2022, the parties concluded a settlement agreement which was duly accepted and signed by both the applicant and the first respondent. The settlement agreement was incorporated into the final decree of divorce on 7 July 2022. It is also further common cause that at the time of the divorce and the settlement agreement being entered into, the applicant was legally represented and the first respondent not.

The Settlement Agreement

[4] The settlement agreement *inter alia* dealt with the immovable property situated at 1[...] B[...] Street, Upington, Northern Cape, which is the subject of this application.

[5] The relevant parts of the settlement agreement, for purposes of this application are recorded as follows:

‘Whereas the parties have reached a settlement and wish to record the following in writing which they pray to be incorporated into the final decree of divorce;

- 2.1. The parties are joint owners of the immovable property situated at 1[...] B[...] Street, Upington.*
- 2.2. The plaintiff will remain in occupation of the premises and on condition that her right will cease when she is involved in a cohabiting relationship with any third party or remarries. In such an event, the defendant will retake occupation of the premises and on condition that his right will also cease when he is involved in a cohabiting relationship with any third party or remarries. The party that is in occupation of the premises will be responsible for the payment of the bond instalments.*
- 2.3. Should any of the condition/s under clause 2.2 above present itself, the premises will be let, and the net proceeds be split equally amongst the parties.*
- 2.4. If in the event the plaintiff should relocate, and the defendant not retake possession, the immovable property will be let and the net income will be split*

equally between the parties. Any expenses involved regarding necessary repairs on the property during this period will be borne equally between the parties.

- 2.5. *The parties will share the costs of insurance on the property.*
- 2.6. *The plaintiff will be responsible for continuing the bond repayments to the Bank for as long as she is in sole possession of the property.*
- 2.7. *The defendant will be responsible for 50% (fifty percent) of the property rates and taxes.*
- 2.8. ***The immovable property will only be sold in the open market if both parties come to an agreement to sell the property. In such an event, the net proceeds will be split equally between the parties.***
- ...
- 3.4. *On receipt of the payment of [50% of] the defendant's interest [in the pension fund], the plaintiff will settle the outstanding bond with the current bond holder.*
- ...
7. ***This settlement agreement constitutes the full agreement between the parties, and no party will have any claim against the other party whatsoever, except that which is contained in this agreement.***¹

[6] It is further common cause that after the divorce, the parties concluded a deed of sale in respect of the immovable property on 1 February 2023. The relevant parts of the deed of sale are as follows:

'NADEMAAL

Die Verkoper die geregistreerde eienaar is van een helfte van ondervermelde eiendom en begerig is om dit aan die KOPER te verkoop, welke Koper gewillig is en in staat is om te koop, op die voorwaardes hierin vervat;

NOU DERHALWE GETUIG DIE PARTYE AS VOLG:

1. EIENDOMSBEKRYWING

Die eiendom wat hierby verkoop word, word as volg omskryf: EEN HALWE AANDEEL IN ERF 1[...] UPINGTONGELEË IN DIE UPINGTON DORPSUITBREIDING 15DAWID KRUIPER PLAASLIKE MUNISIPALITEITAFDELING GORDONIANOORD-KAAP PROVINSIEGROOT: 1 031

¹ Emphasis supplied.

(EEN DUISEND EN EEN-EN-DERTIG) VIERKANTE METERGEHOU KRAGTENS TRANSPORTAKTE T 1617/2002 (hierna die **EIENDOM** genoem)

2. KOOPPRYS

Die volle KOOPPRYS van die eiendom beloop die bedrag van **R350 027.87 (DRIE HONDERD EN VYFTIG DUISEND SEWE-EN-TWINTIG RAND EN SEWE-EN-TAGTIG SENT)** Betaalbaar deur die KOPER aan die VERKOPER as volg:

2.1 Bovermelde eiendom word nie op registrasie aan die VERKOPER uitbetaal nie, maar betaal die KOPER die bestaande balans van die bestaande verband by Standard Bank by wyse van substitusie ingevolge Artikel 57 van die Akteswet aan die Bank terug ten einde VERKOPER uit die verband se werking te onthef en die VERKOPER se halwe aandeel te bekom om gevolglik volle eienaar te word van bovermelde eiendom.

...

7. OORDRAGKOSTE:

7.1 Die KOPER is aanspreeklik vir alle koste verbonde aan die transporterings van die eiendom in haar naam wat insluit transportbesorgersgelde, plaaslike owerheids uitklaringskoste, beraamde voorsiening vir eiendomsbelasting en die koste verbonde aan die opstel van hierdie ooreenkoms asook die koste ten aansien van die substitusie van die bestaande verband. Sodanige koste is betaalbaar op aanvraag daarvan deur die Aktebesorgers.

8. OORDRAG:

8.1 Oordrag van die EIENDOM sal alleenlik geregistreer word deur die VERKOPER se Aktebesorger word by nakoming van die betalings verskuldig ingevolge klousule 2 en 7 hiervan.

8.2 Die transportbesorger sal geregtig wees om die oordrag van die eiendom terug te mag hou indien die betalings soos hierbo na verwys, nie ten volle vereffen is nie.'

[7] Prior to the institution of these proceedings, the parties exchanged numerous correspondence in respect of the aforesaid immovable property. After it became clear that the parties could not find each other, the applicant instituted the present proceedings.

Applicant's case

[8] The applicant's case is the following: She remained in occupation of the immovable property after the divorce and continued to make payments in terms of the settlement agreement. The first respondent failed to honour the settlement agreement and make full payment of his portion of costs occasioned in respect of the property. The deed of settlement was superseded by a deed of sale which they entered on or about 1 February 2023. The deed of settlement was amended by agreement in respect of clause 2 thereof, to the effect that the first respondent would not receive any portion of the proceeds, but that they would be used to settle the bond with Standard Bank. She has fulfilled her obligations in terms of the deed of sale, whilst the first respondent has failed to do so. The first respondent failed to give his cooperation to sign all the necessary documents to enable the transfer of the immovable property into her name.

Respondent's case

[9] The first respondent in his answering affidavit raised two points *in limine* in opposition to the application. The first point was abandoned at the hearing of this matter, and counsel for the first respondent only persisted with the second point, namely that the relief sought by the applicant is contrary to the court order granted on 7 July 2022.

[10] It is the first respondent's case that: The settlement agreement made no provision for its variation or amendment in writing, and it constituted the full agreement between the parties because paragraph 7 thereof is a non-variation clause. Given that the applicant is not seeking an amendment or variation of the settlement agreement, she is seeking an order that is contrary to the settlement order, and that is legally untenable. Even if the applicant's case is construed as an application for the amendment/variation of the settlement order, this Court is not empowered to grant such relief. This is

because section 8(1) of the Divorce Act,² only provides for the variation of settlement orders relating to maintenance and the custody or guardianship of, or access to, a child, but not the division of the parties' assets. The Court cannot order variation in the absence of an agreement between the parties to seek such relief. The applicant ought to have approached the Regional Court with an addendum to the deed of settlement to seek an amendment.

[11] In any event, the applicant has breached the terms of the settlement agreement in that, she has failed to pay the monthly bond instalment in respect of the immovable property and the 50% of the insurance on the property. Consequently, he paid the monthly bond instalment and the insurance premiums in respect of the immovable property and as such, the applicant is indebted to him.

[12] Furthermore, the deed of sale cannot be enforced for the following reasons: (i) it improperly purports to amend a settlement order; and (ii) he signed the deed of sale under duress. At the time of the conclusion of the sale agreement, he was not informed that the settlement agreement does not make provision for its amendment, and that he would be responsible for donation tax in the event the immovable property is transferred in the name of the applicant for a value less than its market value.

Analysis

[13] The applicant seeks the relief sought on the basis of the deed of sale in February 2023. She contends that the deed of sale amended paragraph 2 of the settlement agreement and superseded the settlement agreement. It is against this backdrop that the applicant has approached this Court to enforce compliance with the terms of the deed of sale agreement.

[14] On the other hand, the first respondent contends that the relief sought by the applicant is contrary to the settlement agreement, which is a court order, and

² 70 of 1979.

thus, still stands until it is set aside or varied. The first respondent disputes that the settlement agreement was amended.

[15] It is trite law that once a settlement agreement between the parties is incorporated into a divorce order, it acquires the status of a judgment³ and, as such, is recognised as an order of court which stands until set aside by a court of competent jurisdiction. It is also trite that generally, once a court has pronounced a final order, the matter is *res judicata* in so far as it relates to the underlying *lis* in relation to which the parties reached a compromise. This closes the door to the applicant from litigating on the same matter.

[16] A settlement agreement is an agreement which confers contractual rights and obligations on the parties thereto. The effect of making a settlement agreement an order of court is to change the status of the rights and obligations between the parties. In *Eke v Parsons*⁴, the Court held as follows:

‘ . . . Save for litigation that may be consequent upon the nature of the particular order, the order brings finality to the lis between the parties; the lis becomes res judicata (literally, “a matter judged”). [The principle is that generally, parties may not again litigate on the same matter once it has been determined on the merits.] It changes the terms of a settlement agreement to an enforceable court order.’

[17] In *Moraitis Investments (Pty) Ltd and Others v Montic Dairy (Pty) Ltd*⁵, the Supreme Court of Appeal (SCA) emphasised that once a settlement agreement is made an order of court, it has a binding effect and cannot be simply ignored. The Court held as follows at paragraph 10:

‘ . . . For so long as that order stood, it could not be disregarded. The fact that it was a consent order is neither here nor there. Such an order has exactly the same standing and qualities as any other court order. It is res judicata as between the parties in regard to the matters covered thereby. The Constitutional Court has repeatedly said that court orders may not be ignored. To do so is inconsistent with s 165(5) of the Constitution, which provides that an order issued by a court binds all people to whom it applies.’

³ *PL v YL* 2013 (6) SA 28 (ECG) para 32.

⁴ [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) para 31.

⁵ 2017 (5) SA 508 (SCA).

- [18] Accordingly, the settlement agreement *in casu* remains binding and valid unless set aside, varied or amended. Both the applicant and the first respondent are also *ad item* on this aspect. What is in dispute is whether the deed of sale purports to amend paragraph 2 of the settlement order, and if so, whether that can or could be done by agreement between the parties or whether they necessarily had to approach the court to seek such an amendment.
- [19] In light of the approach I adopt in this judgment, it is unnecessary to determine whether the deed of sale purports to amend the settlement order and whether that can or could be done by agreement between the parties, despite paragraph 7 of the settlement agreement and/or the fact that the agreement was made an order of court. I am prepared to assume, without deciding, that the parties could subsequently conclude a sale agreement in respect of the immovable property.
- [20] As already said, the applicant's alleged right to the first respondent's share in the immovable property and the transfer of the immovable property arises from the deed of sale. In sum, the first respondent raised three grounds to sustain the argument that the deed of sale cannot be given effect to. First, he argues common mistake on both parties in so far as they believed that they could conclude further agreements in relation to the immovable property despite the standing settlement order. Ancillary to this argument appears to be the averment that the applicant breached the terms of the settlement agreement by failing to pay the bond upon receipt of a share of the first respondent's pension fund. The first respondent seems to conclude that he cannot still be paying the bond as envisaged in clause 2 of the deed of sale. Second, in no clear terms, the first respondent seems to argue misrepresentation by non-disclosure in that he was not informed that he would be liable for the donation tax should the property be sold at a price that is lower than its market value. Finally, he averred that he was also under duress to sign the deed of sale.

- [21] Having assumed, without deciding, that the parties could conclude further agreements in relation to the immovable property, I deal only with the ancillary argument relating to the applicant's non-compliance with the settlement order in so far as the first ground is concerned. The parties dispute whether each party fulfilled its obligations under the settlement agreement. In terms of the settlement agreement, the parties are joint owners of the immovable property. Clause 2.8 made provision for the immovable property to be sold in the open market, if both parties agreed to sell the property, and for the net proceeds of the sale to be split equally between the parties.
- [22] In terms of clause 3.4 of the settlement agreement, the applicant was ordered to settle the outstanding bond with the bond holder upon her receipt of a share of the respondent's pension fund. On the papers, it is alleged that the applicant received the pension interest in December 2022. Thus, there is an expectation that that clause ought to have been complied with prior to the conclusion of the deed of sale on 2 February 2023.
- [23] The applicant baldly avers that she complied with the terms of the settlement agreement. This is despite the fact that the first respondent has attached his pay slips and bank statements evidencing the payments he has made from July 2022 to September 2024. In response, the applicant merely notes the allegations and denies breaching the terms of the settlement agreement.
- [24] On the papers, I accept that the applicant failed to fulfil her obligations in terms of the settlement agreement. However, this does not assist the first respondent's case because, on his own version, he signed the deed of sale despite knowing that the applicant had not settled the bond. Needless to say, the first respondent was fully aware that the applicant's failure to settle the bond was a breach of the settlement agreement and yet at no point did he seek to enforce the settlement order. The first respondent still did not make a counter application seeking the enforcement of the settlement order *in casu*. He also knew that the deed of sale made provision for the purchase price to be used to settle the bond instead of being paid to him.

[25] While the first respondent is free to live with the consequences of the applicant's non-compliance with the settlement order and not seek to enforce the order, he cannot now try to get out of the deed of sale on the basis that he should not still be paying the bond through clause 2 of the deed of sale. The principles of contract law are such that, generally, a party who bound himself contractually, despite his awareness of some unfavourable terms in the contract, shall be held to those terms and cannot renege afterwards.⁶ The first respondent, correctly so in my view, did not argue that the enforcement of the sale agreement in the circumstances would be contrary to public policy.

[26] Regarding the second argument, it is settled that non-disclosure or failure to remove an existing impression is misrepresentation only if the party who is said to have misrepresented the facts was under a duty to disclose the true state of affairs.⁷ Further, the non-disclosure must: be material⁸; be made by the other party to the contract⁹; with the intention of inducing the contract¹⁰; and induced the contract. The first respondent merely avers that he was not informed that he would be liable for donation tax. He does not express who had a duty to inform him about the donation tax and whether the non-disclosure was fraudulent or otherwise. His argument is unsubstantiated and nothing more needs to be said in this regard.

[27] In relation to the third argument, the *onus* lay on the first respondent to persuade the Court that there was no true consent on his part to entering into the deed of sale because of improper pressure placed upon him, which would render the contract voidable.¹¹ He states as follows:

'During October 2022, the applicant provided me with a deed of sale. At that stage, I was not legally represented, I was under extreme pressure at work and emotionally

⁶ *Beadica 231 CC and Others v Trustees, Oregon Trust and Others* 2020 (5) SA 247 (CC) paras 82-90.

⁷ *New Adventure Investments 193 (Pty) Ltd v Trustees for the time being of the SAS Trust* 2002 3 All SA 544 (C) 555 para 35.

⁸ *Ibid*; see also *Orville Investments (Pty) Ltd v Sandfontein Motors* 2000 (2) SA 886 (T) at 916.

⁹ *Slip Knot Investments 777 (Pty) Ltd v Du Toit* 2011 (4) SA 72 (SCA) para 8.

¹⁰ *New Adventure Investments 193 (Pty) Ltd v Trustees for the time being of the SAS Trust (supra fn 7)* para 35.

¹¹ *Hohne v Super Stone Mining (Pty) Ltd* 2017 (3) SA 45 (SCA) para 29.

pressured by the applicant to sign the agreement by using our daughter as a weapon against me. I signed the agreement under duress on 13 October 2022. . . .'

[28] It is trite in our law that a contract may be vitiated by duress where improper pressure or intimidation renders the consent of the party subject to duress not true consent at all.¹² In *Arend and Another v Astra Furnishers (Pty) Ltd*¹³ ("*Arend*"), it was held as follows:

' . . . Where a person seeks to set aside a contract, or resist the enforcement of a contract, on the grounds of duress based upon fear, the following elements must be established:

- (i) The fear must be a reasonable one.*
- (ii) It must be caused by the threat of some considerable evil to the person concerned or his family.*
- (iii) It must be the threat of an imminent or inevitable evil.*
- (iv) The threat or intimidation must be unlawful or contra bonos mores.*
- (v) The moral pressure used must have caused damage.'*

[29] The first respondent goes no further to substantiate the allegations of duress. He fails to explain with sufficient particularity exactly how he was emotionally pressured by the applicant. This does not enable an evaluation of his defence against the requirements of duress outlined in *Arend*. He fails to demonstrate whether his fear was reasonable, whether the threat was unlawful and/or *contra bonos mores*, or whether the threat was imminent or inevitable. As such, this Court is not placed in a position to establish whether these allegations have any merit. Consequently, the argument of duress cannot be sustained. What remains for determination is whether the applicant is entitled to the specific performance she sought.

[30] On a contextual reading of the deed of sale, the applicant had an intention to purchase the first respondent's share of the immovable property and would pay the purchase price into the bond holder's account. In terms of clause 8 of

¹² *Arend and Another v Astra Furnishers (Pty) Ltd* 1974 (1) SA 298 (C) at 305H-306A.

¹³ *Supra* at 306A-B.

the deed of sale, the transfer of the immovable property could only be effected after there was compliance with clause 2 and clause 7, i.e. payment of the purchase price and transfer costs. Despite seeking compliance with the terms of the deed of sale from the first respondent, the applicant has not shown that she has fulfilled her reciprocal obligations¹⁴ in terms of the deed of sale or that she has tendered compliance with the terms thereof. It is trite in our law that a party wishing to claim specific performance in terms of a contract must not only allege and prove the terms of the contract; allege non-performance by the defendant, but also compliance with the antecedent or reciprocal obligations; tender to perform them.¹⁵

Conclusion

[31] The applicant was willing to resile from the terms of the deed of sale yet launched this application to compel the first respondent to comply therewith. Having failed to comply with the terms of the deed of sale, the applicant is thus not entitled to the relief sought based on the terms of the deed of sale.¹⁶ As such, I find that the applicant has failed to make out a case for the relief sought.

Costs

[32] With regard to costs, I see no reason to depart from the general rule that costs follow the result. In light of the dismissal of the application, I am inclined to grant costs in favour of the first respondent.

Order

[33] Consequently, I make the following order:

¹⁴ *Grand Mines (Pty) Ltd v Giddey* 1999 (1) SA 960 (SCA) at 966; *Man Truck & Bus (SA) (Pty) Ltd v Dorbyl Ltd t/a Dorbyl Transport Products and Busaf* 2004 (5) SA 226 (SCA) para 12.

¹⁵ *RM Van de Ghinste & Co (Pty) Ltd v Van de Ghinste* 1980(1) SA 250(C).

¹⁶ *Crispette and Candy Co Ltd v Oscar Michaelis NO and Leopold Alexander Michaelis NO* 1947 (4) SA 521 (A) at 537.

1. The application is dismissed with costs on a party and party scale including counsel's fees on Scale B.

T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:

Instructed by:

Adv FG Janse van Rensburg

Hein Duvenhage Attorneys

c/o Engelsman Magabane Inc.

For the First Respondent:

Instruction by:

Adv AS Sieberhagen

Duncan & Rothman Inc.