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**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no: 100792/2025

In the matter between:

**N[...] M[...] O[...]**

Applicant

and

**C[...] P[...] V[...] Z[...]**

First Respondent

**H[...] J[...] V[...] E[...] O[...]**

Second Respondent

**THE REGISTRAR OF DEEDS, CAPE TOWN**

Third Respondent

*In Re:* in the matter between:

**C[...] P[...] V[...] Z[...]**

First Applicant

**H[...] J[...] V[...] E[...] O[...]**

Second Applicant

and

**N[...] M[...] O[...]**

First Respondent

**THE UNKNOWN FAMILY MEMBERS OF**

Second Respondent

N[...] M[...] O[...]

**THE UNKNOWN UNLAWFUL OCCUPIERS** Third Respondent

**THE HESSEQUA LOCAL MUNICIPALITY** Fourt Respondent

**Neutral citation:** (*O[...] v V[...] Z[...] and Others; V[...] Z[...] and Another v Oliver and Others*; Case no: 1100792/2025 [2026]  
ZAWCHC (1 June 2026)

**Coram:** LOUW AJ

**Heard:** 1 June 2026

**Delivered:** 12 June 2026

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***EX TEMPORE JUDGMENT***

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**Louw AJ:**

**Introduction<sup>1</sup>**

[1] This matter concerns two applications. The first application is brought by Mr C[...] V[...] Z[...] ('the grandson'), the holder of a *usufruct* over

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<sup>1</sup> This introductory section has been adapted from the *ex tempore* judgment delivered in court to facilitate greater clarity and coherence and paragraphs 1 to 3 have therefore been added. It is intended to assist in following the reasoning set out in the *ex tempore* judgment that follows from paragraph 4 onwards, as well as to provide a clearer understanding of the orders granted in respect of both matters before the court, namely the eviction application and the counter application for the setting aside of the *usufruct* upon which the eviction application was founded. For ease of reference and readability, it also sets out how the parties are referred to throughout the judgment.

an immovable property, namely Erf 1[...], Still Bay and owned by his grandfather, Mr H[...] O[...], seeking the eviction of Mr O[...]’s spouse, Mrs N[...] O[...], who resides on the property (previously the matrimonial home of the spouses). This application will be referred to as ‘the eviction application’. In this application, Mr V[...] Z[...] is the first applicant and Mr O[...] the second applicant. Mrs O[...] is cited as the first respondent. The second respondent comprises unknown family members of Mrs O[...], the third respondent comprises unknown occupiers, and the fourth respondent is the Hessequa Local Municipality cited in respect of unlawful occupiers.

- [2] The second application arises by way of a counter application brought by Mrs O[...], in which she seeks an order setting aside the *usufruct*. In this application, Mrs O[...] is the applicant, and Mr V[...] Z[...], as holder of the *usufruct*, is cited as the first respondent, with Mr O[...] cited as the second respondent. The third respondent is the Registrar of Deeds, Cape Town. Mrs O[...] opposes the eviction application and, in that context, instituted this counter application, which will be referred to as ‘the application to set aside the *usufruct*’.
- [3] It was agreed between the parties that both applications should be heard together. Both applications turn on the validity of the *usufruct*, which is central to the relief sought in each. It was further agreed that the application to set aside the *usufruct* should be determined first, as its outcome would have a direct and decisive impact on the eviction application. Should the *usufruct* be found to be invalid and set aside, it would necessarily follow that the eviction application could not be

sustained. The court accordingly proceeded on this basis. In the *ex tempore* judgment set out below, particularly dealing with the application to set aside the *usufruct*, Mr O[...] is referred to as the ‘donor husband’ and Mrs O[...] as the ‘donee spouse’. Mr V[...] Z[...] is referred to as ‘the grandson’.

- [4] The application to set aside the *usufruct* deals with the legal effect of a donation contained in an antenuptial contract, in terms of which the single immovable property situated in Still Bay (that is, Erf 1[...]) was to be transferred by the donor husband, Mr H[...] O[...], the second respondent in this application, to the donee spouse upon the donor’s death. The present dispute centres on whether, after the registration of the antenuptial contract, the donor could validly register the *usufruct* over that same property in favour of a third party.

## **The Facts**

- [5] The parties concluded an antenuptial contract on 17 March 2017, which was duly registered in the Deeds Registry, Pretoria on 20 March 2017, prior to their marriage on 13 May 2017. In terms thereof, the donor husband undertook to donate one specific immovable property, namely the property situated in Still Bay, to the donee spouse, with transfer to occur upon the donor’s death.<sup>2</sup>

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<sup>2</sup> Clause 7 of the antenuptial contract provides that the man hereby undertakes, for the sake of the aforementioned intended marriage and as a *donation proper nuptias*, to give the woman as her exclusive and absolute property right the ERF 1714 STILBAAI upon the death of the man (in Afrikaans ‘by my afsterwe’). With clause 8 providing the donations mentioned in schedule 7 above are accepted by the woman with thanks (in

- [6] It is common cause that no other property formed the subject of any such donation. Subsequent to the registration of the antenuptial contract, and while the marriage still subsists, albeit with divorce proceedings presently pending, the donor husband purported to grant and register the *usufruct* over the Still Bay property in favour of a third party, his grandson. The usufruct was registered over the property in favour of the grandson on 28 October 2024.
- [7] The donee spouse, who is presently in her eighties, continues to reside in the matrimonial home. The grandson (third party) in whose favour the *usufruct* was registered is approximately twenty years of age, a fact which, on the face of it, raises serious concerns regarding the *bona fides* of the transaction.
- [8] It is further relevant that the donor husband's health has deteriorated in recent years. However, the evidence indicates that such deterioration arose primarily from an operation on an old knee injury, complications arising therefrom, and subsequent septicaemia, requiring hospitalisation and further medical intervention.
- [9] Even after his removal from the matrimonial home by his daughter, the donor continued to require extensive medical treatment, including hospitalisation and admission to a step-down facility. There is no

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Afrikaans the clause reads '[d]ie skenkings genoem in schedule 7 hierbo genoem word deur die vrou met dank aanvaar').

cogent evidence before this Court to establish that the donee spouse contributed to or caused the deterioration of the donor's health.

### **The Nature of the Donee's Right**

[10] The donation contained in the antenuptial contract constitutes a valid *donatio propter nuptias*.<sup>3</sup> Although performance is postponed until the death of the donor, the agreement gives rise to a vested personal right in favour of the donee spouse. This is not a *donation mortis causa* in this matter, thus it is not capable of revocation. In my view, the donation in this matter constitutes a donation in lieu of the marriage.

[11] This right (the personal right in favour of the donee spouse) arises upon the execution and registration of the antenuptial contract and is binding.<sup>4</sup> It is not a mere expectation but an enforceable contractual entitlement to receive the Still Bay property upon the death of the donor spouse. The grandson clearly had knowledge of the antenuptial

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<sup>3</sup> Clause 7 of the antenuptial contract expressly records that the donation is a *donatio propter nuptias*.

<sup>4</sup> It is well established that an antenuptial contract, once duly registered in the Deeds Registry, is binding not only between the spouses, but also enforceable against third parties. It is apparent from section 86 of the Deeds Registries Act 47 of 1937 that an antenuptial contract which is not executed and registered in accordance with the requirements and within the time period prescribed in section 87 of the Deeds Registries Act will not be enforceable against third parties who are not parties to that contract (*Ex parte Spinazze and Another NNO* 1985 (3) SA 650 (A) at 658A-B). The registration of such a contract serves a publicity function, affording notice to the world of its terms and legal consequences, as recognised in *Ex parte Spinazze* above at 658C (see also *Ex parte Kloosman et Uxor* 1947 (1) SA 342 (T) at 347 and *Johnson and Another v Registrar of Deeds* 1931 CPD 228 at 231). Consequently, third parties are deemed to have knowledge thereof and are bound by its provisions (H R Hahlo *Law of Husband and Wife* 5 ed (1985) at 261-262). An informal antenuptial contract requires no formalities in order to be effective between the spouses and any third party who is a party to it. However, informal antenuptial contracts are not binding on third parties and operate only *inter partes* (P A van Niekerk *Practical Guide to Patrimonial Litigation in Divorce Actions* (Oct 2025, Issue 29) (LexisNexis) in Chapter 1 at para 1.2). In the present matter, however, the antenuptial contract was duly registered in the Deeds Office and is therefore binding not only between the spouses, but also enforceable against third parties.

contract, including the donation, and this assertion in the papers was never disputed.

### **The Simulated Nature of the *Usufruct***

[12] Having regard to the timing, circumstances, and surrounding facts, I am satisfied that the purported registration of the *usufruct* was not a *bona fide* transaction. The stark disparity in age between the donee spouse and the grandson (third party), coupled with the fact that the *usufruct* burdens the only property promised to the donee spouse under the antenuptial contract, supports the inference that the transaction was simulated.

[13] The only plausible purpose of the *usufruct* was to defeat or diminish the donee spouse's vested right to the Still Bay property in terms of the antenuptial contract. A simulated transaction, designed to evade a prior legal obligation, cannot be upheld. The Court is entitled to look beyond the form of the transaction to its true substance.<sup>5</sup> In substance, the *usufruct* was an attempt to avoid the transfer of the property to the donee spouse.

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<sup>5</sup> The test for simulation is well established. In *Zandberg v Van Zyl* 1910 AD 302, the court held that regard must be had to the true intention of the parties, and not merely to the form of the transaction. In *Commissioner of Customs and Excise v Randles, Brothers and Hudson Ltd* 1941 AD 369 the parties arranged their affair in such a way to avoid the legal consequences and also to hide the real agreement. This principle, namely that courts will look beyond the form of a transaction to its true substance, has been consistently reaffirmed in subsequent jurisprudence. For example, in *Commissioner for SARS v NWK Ltd* 2011 (2) SA 67 (SCA) the court emphasised the importance of examining the commercial substance of the transaction, and in *Roshcon (Pty) Ltd v Anchor Auto Body Builders CC* 2014 (4) SA 319 (SCA) the court confirmed that the primary inquiry remains whether the parties genuinely intended the transaction to operate according to its terms. Courts will not be misled by the outward form of a transaction where dishonesty is present. Instead, they will look beyond appearances to determine the true substance of the arrangement and expose any attempt to disguise its real nature.

## **The Donor Husband's Powers and Limitations**

[14] While the donor husband remains the owner of the property during his lifetime, his rights of disposal were contractually limited by the prior undertaking in the antenuptial contract. The donor husband was not entitled to act in a manner that undermines or derogates from the obligation to transfer the property to the donee spouse. The creation of the *usufruct* in favour of a third party substantially diminishes the value and enjoyment of the property and is inconsistent with the obligation undertaken in the antenuptial contract.

## **Pending Divorce Proceedings**

[15] It is significant that the divorce between the parties has not yet been finalised and was instituted in this court on 6 December 2023. The marriage therefore subsists in law. In these circumstances, any attempt to evict the donee spouse from the matrimonial home is premature. The donee spouse's rights – both as a spouse in an ongoing marriage and as the holder of a vested personal right under the antenuptial contract – remain intact until such time as the marriage is lawfully dissolved and the consequences thereof determined.

## **Allegations of Misconduct and Ingratitude**

[16] No evidence has been placed before this Court establishing conduct on the part of the donee spouse that would justify revocation of the donation on the grounds of ingratitude.<sup>6</sup> The suggestion that the donee spouse contributed to the deterioration of the donor's health, particularly in relation to complications following a knee operation, is without merit and unsupported by the facts.

[17] On the contrary, the medical history demonstrates that the donor's condition was the result of a pre-existing injury, surgical intervention, and subsequent medical complications, including septicaemia. Furthermore, even after his removal from the matrimonial home, the donor's health challenges persisted and required ongoing treatment. This clearly negates any inference that the donee spouse was responsible for his condition. In the absence of serious misconduct directed against the donor, the ground of ingratitude can in any event not be invoked.

## **Legal Consequences and Conclusion**

[18] The purported registration of the *usufruct* constitutes both: a breach of the antenuptial contract, and a simulated transaction designed to

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<sup>6</sup> A donation in an antenuptial contract is capable of revocation only in limited circumstances. A donation in the proper sense is a disposition motivated by liberality or generosity, being a transfer effected without consideration and arising from a spirit of benevolence. Ordinarily, the revocation of such a donation requires proof of gross ingratitude, slight grounds being insufficient. However, a donation contained in an antenuptial contract is not a donation properly so called and is therefore not susceptible to revocation on the basis of gross ingratitude (*Wulff v Wulff* [1956] 4 All SA 41 (D) at 59; 1956 (4) SA 297 (D) at 308). The rationale for this exception lies in the nature of such a donation, which is not made out of pure liberality, but in contemplation of, and in consideration for, the marriage (*Commissioner For Inland Revenue v Estate Hulett* 1990 (2) SA 786 (A) at 793F-I). It serves to promote and support the marital relationship, and is for the benefit of both spouses and their issue (Van Niekerk above fn 4 in Chapter 3 at para 3.4.3.2). In the present matter, the antenuptial contract expressly records that the donation was accepted by the woman with thanks, thereby evidencing a completed agreement between the parties.

defeat the donee's rights. Such a transaction cannot stand where it prejudices a prior vested right. The donee is entitled to enforce the antenuptial contract in accordance with its terms, which entails receipt of the Still Bay property free from any encumbrance improperly imposed thereafter.

[19] Upon consideration of the evidence and submissions before the court, the following conclusions are reached. The donation contained in the antenuptial contract is valid and enforceable. The *usufruct* granted to the grandson (third party) is a simulated transaction intended to defeat that donation. The donor husband was not entitled to burden the property in this manner. The donee spouse retains her rights under the antenuptial contract. Any attempt to evict the donee spouse is premature while the divorce remains pending. No grounds of ingratitude or misconduct have been established. Further, the purported *usufruct* registered over the Still Bay property is declared unenforceable insofar as it prejudices the rights of the donee spouse under the antenuptial contract.

[20] Any application for eviction of the donee spouse from the property is dismissed as premature pending the finalisation of the divorce proceedings. The donee spouse's right to receive transfer of the Still Bay property in terms of the antenuptial contract is confirmed and protected.

[21] Due to the *usufruct* having been declared unenforceable and my order that the usufruct must be cancelled and set aside, the grandson has no

*locus standi* to continue with the eviction order. In addition, the donor spouse also has no grounds to evict given the donation contained in the antenuptial contract is valid and enforceable, and any other matter regarding the property may be dealt with in the pending divorce proceedings.

## **Costs<sup>7</sup>**

[22] Costs fall within the discretion of the court. Punitive costs orders are not granted lightly and are reserved for instances where a party's conduct is dishonest, vexatious, or otherwise deserving of the court's strongest disapproval. In the present matter, I consider such an order not only justified, but necessary. Accordingly, I grant a punitive costs order on the attorney and client scale, including the costs of both senior and junior counsel, on scales C and B respectively, where so employed, in respect of both the applications (being the application to set aside the *usufruct* and the eviction application).

[23] The conduct of the donor husband and the grandson warrants unequivocal condemnation. On the evidence before this court, they acted in concert in procuring the registration of the *usufruct* with the clear and deliberate intention of undermining and defeating the donee spouse's rights as secured in the antenuptial contract. The transaction bears all the hallmarks of a simulation and reflects a calculated

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<sup>7</sup> Costs were awarded in favour of the donee spouse, as submitted by counsel for the donee spouse. While my reasons were outlined briefly during my *ex tempore* judgment in court, I take this opportunity to set them out more fully here. The purpose of this written explanation is to provide greater clarity and a more comprehensive justification for the decision regarding costs.

attempt to mislead and to deprive the donee spouse of her lawful entitlement.

[24] Such conduct is manifestly dishonest and constitutes a serious abuse of legal process. The subsequent eviction application, founded on this contrived arrangement, was equally devoid of merit and can properly be characterised as vexatious. It was pursued notwithstanding the clear legal position, thereby compounding the prejudice suffered by the donee spouse. As a direct consequence of this conduct, the donee spouse was compelled to incur substantial and unnecessary legal costs in order to vindicate and protect her rights. In these circumstances, a punitive costs order is not only appropriate but required, to mark the court's disapproval in the strongest possible terms and to ensure that such conduct does not go unchecked.

[25] In the application to set aside the *usufruct* I order:

1. The Notarial Deed of Session of Usufruct, registered in favour of the first respondent and held under T6820/2024, in respect of Erf 1[...], Still Bay, Riversdale, Western Cape, registered against the Deed of Transfer T13670/2017, is cancelled and set aside.
2. The third respondent is ordered to take the necessary and required steps to cancel and set aside the Notarial Deed of Session of Usufruct, registered in favour of the first respondent and held under T6820/2024.

3. The first and second respondents are ordered, jointly and severally, the one to pay the other to be absolved, to pay the costs of this application on the attorney and client scale, including costs of senior and junior counsel, on scale C and B respectively, where so employed.

[26] In the application to evict I order:

1. The application is dismissed.
2. The first and second applicants are ordered, jointly and severally, the one to pay the other to be absolved, to pay the costs of this application on the attorney and client scale, including costs of senior and junior counsel, on scale C and B respectively, where so employed.

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**M LOUW**  
**ACTING JUDGE OF THE HIGH COURT**