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

JUDGEMENT

Reportable/Not Reportable

Case No: 2025-170057

In the matter between:

REGINALD NORMAN FREDERICKS

APPLICANT

And

LAUREN LEE FREDERICKS

FIRST RESPONDENT

THE REGISTRAR OF DEEDS, CAPE TOWN SECOND RESPONDENT

Neutral citation: *Fredericks v Fredericks and Another* (Case no 2025-170057) [2026] ZAWCHC (19 June 2026)

Coram: Yake AJ

Heard: 19 May 2026

Delivered: Electronically on 19 June 2026

Summary: Sale Agreement not perfected – applicant entitled to cancel the agreement– first respondent failed to comply with Rule 41A (2) (b) of the

Uniform Rules - no dispute of facts existed warranting ventilation at trial.

ORDER

1. In the result, I make the following order:
 - a) The first respondent's points in limine are dismissed.
 - b) The Deed of Sale concluded between the applicant and the first respondent on 15 February 2022 for the sale of the immovable property situated at 3[...] A[...] Road, C[...], Cape Town ('the property') is hereby cancelled.
 - (c) The transfer of the property which was effected by the second respondent on 18 May 2022 is set aside.
 - (d) The second respondent is ordered to facilitate the transfer of the property into the name of the applicant, being the previous title holder, subject to the same terms and conditions of the title as existed immediately prior to the transfer of the property to the first respondent.
 - (e) The firm Ashersons Attorneys is hereby appointed as the attorneys to attend to and facilitate the transfer of the property to the applicant from the first respondent.
 - (f) The first respondent is ordered to sign all documents and take whatever steps necessary to give effect to (d) above, failing which the sheriff of the Court or his lawful deputy is authorised and directed to sign any such documents as are required to effect transfer of the property to the applicant as contemplated in (d) above.
 - (g) The first respondent is ordered to pay costs consequent upon transfer of the property to the applicant.

(h) The first respondent is ordered to pay costs of the application, including costs of counsel, on scale B.

JUDGMENT

YAKE AJ:

Introduction

[1] This matter arises from the alleged breach of a written deed of sale agreement (“the agreement”) concluded between the applicant and the first respondent on 15 February 2022. In terms of the agreement, the applicant undertook to sell his immovable property situated at 3[...] A[...] Road, C[...], Cape Town (“the property”) to the first respondent for the purchase price of R650 000. The agreement expressly provided that the first respondent would pay the stipulated purchase price upon registration of transfer of the property into her name.

[2] On 18 May 2022, the deed of transfer was registered in the name of the first respondent. The applicant alleges that notwithstanding such registration, the first respondent failed to effect payment of the agreed purchase price, thereby committing a breach of the agreement. Consequently, upon the first respondent’s breach, the applicant elected to cancel the agreement and instituted the present application. In doing so, the applicant in his notice of motion seeks relief in the following terms:

- ‘(a) That the Deed of Sale concluded between the applicant and the first respondent on 15 February 2022 for the sale of the immovable property situated at 3[...] A[...] Road, C[...], Cape Town is cancelled.
- (b) In the alternative, that it is declared that the Deed of Sale concluded between the applicant and the first respondent on 15 February 2022 for the sale of the property was induced by fraud and is null and void.
- (c) That the transfer of the property which was effected by the second respondent on 18 May 2022 is set aside.
- (d) That the second respondent is ordered to facilitate the transfer of the property into the name of the applicant, being the previous title holder, subject to the same terms and conditions of the title as existed immediately prior to the transfer of the property to the first respondent.
- (e) That the firm Ashersons Attorneys be hereby appointed as the attorneys to attend to and facilitate the transfer of the property to the applicant from the first respondent.
- (f) That the first respondent is ordered to sign all documents and take whatever steps necessary to give effect to (d) above, failing which the sheriff of the Court or his lawful deputy is authorised and directed to sign any such documents as are required to effect transfer of the property to the applicant as contemplated in (d) above.
- (f) That the first respondent is ordered to pay costs consequent upon transfer of the property to the applicant.
- (g) That the respondent is ordered to pay costs of the application, including costs of counsel, on scale B.’

[3] The application is opposed by the first respondent. In her answering affidavit, she raised three points in limine, namely: (a) that a material dispute of fact exists which renders the matter unsuitable for determination on papers; (b) that the applicant failed to exhaust the provisions of Rule 41A relating to mandatory consideration of mediation; and (c) that the applicant lacks the requisite *locus standi in iudicio* to institute these proceedings.

[4] In the result, the court is enjoined to determine the following issues:

- (a) whether the applicant has the necessary *locus standi* to institute the proceedings;
- (b) should *locus standi* be established, whether the applicant was entitled to bring this application without first exhausting the remedy contemplated in Rule 41A; and
- (c) whether a material dispute of fact exists which cannot be resolved on papers and which by its nature, requires ventilation at trial.

Factual background

[5] The factual background is largely common cause between the parties and may be succinctly set out as follows. The applicant and the first respondent are father and daughter. The applicant, a 77-year-old pensioner, was at all material times the sole registered owner of the immovable property in question. On 15 February 2022, the applicant and the first respondent concluded a deed of sale agreement in terms of which the applicant undertook to sell his property to first the respondent. The agreed purchase price in terms of the agreement was R650 000. The agreement further provided that transfer of the property would be effected only upon payment of the purchase price, with the applicant reserving the right to cancel the agreement in the event of any breach of its terms.

[6] The applicant avers that, at that stage; he had no intention of alienating the property. The first respondent, however, disputes this and contends that the applicant intended to transfer ownership of the property to her, motivated by his fear of being taken advantage of by his sons. Subsequent to the signing of the agreement by the parties, the applicant further signed a power of attorney authorising the transfer of the property.

[7] It is alleged that the first respondent failed to discharge her obligation to pay the purchase price. Notwithstanding such failure, on 18 May 2022, the conveyancing attorney, Mr Maart, proceeded to effect transfer of the property into the first respondent's name and the purchase price reflected in the deed of transfer was R650 000.

[8] As a result of the first respondent's breach, on 17 June 2025, the applicant's attorneys caused a letter of cancellation of the agreement to be served to the first respondent's attorneys. Mr Maart, who also serves as the attorney of record in these proceedings, responded by advising that no purchase price had been paid to them, noting further that the transaction was regarded as a private arrangement between father and daughter. It is on this basis that the matter now serves before this Court for adjudication.

Points in limine

[9] Before engaging with the substantive merits of the application, the Court is required to determine the preliminary points raised by the first respondent. Each of these objections must be considered in turn, mindful that the upholding of any one of them may have the effect of disposing of the matter without recourse to the merits. The first issue to be addressed is that of *locus standi*. Should the applicant be found not to possess the requisite *locus standi* to institute these proceedings, the application would have been improperly brought before the Court and must fail at the threshold.

Locus standi

[10] It is trite that he who has a right to sue in an action is said to have *locus standi* therein, and vice versa. The general rule is that the party instituting

proceedings bears the onus to allege and prove *locus standi*.¹ The requirements for *locus standi* are well established: the applicant must demonstrate an adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief sought. That interest must not be too remote; it must be actual rather than abstract or academic; and it must be current, not hypothetical.² Accordingly, *locus standi* is not merely a procedural formality but a substantive enquiry directed at the sufficiency of a litigant's interest in the proceedings.³ The sufficiency of such interest depends upon the particular facts of each case.⁴ The real enquiry being whether the events complained of constitute a wrong against the litigant, thereby conferring upon him a legally cognisable interest in the relief sought.⁵

[11] In *Amlers Precedents of Pleadings* LexisNexis LTC Harms, 10 ed at 250 the following is said regarding *locus standi*:

‘The question of locus standi is in a sense procedural, but it is also a matter of substance. It concerns the sufficiency and directness of a person's interest in the litigation to be accepted as a litigating party. It is also related to the capacity of a person to conclude a jural act. Sufficiency of interest depends on the facts of each case and there are no fixed rules.’⁶

[12] The respondent has squarely placed the applicant's *locus standi* in dispute. Where such standing is challenged, it must be dealt with on the assumption that all allegations of fact relied upon by the party whose *locus*

¹ *Mars Incorporated v Candy World (Pty) Ltd* [1990] ZASCA 149; 1991 (1) SA 567 (A) at 575H; *Kommissaris van Binnelandse Inkomste v Van der Heever* 1999 (3) SA 1051 (SCA) at 1057G–H.

² *Four Wheel Drive CC v Leshni Rattan NO (1048/17)* [2018] ZASCA 124 para 7; D E van Loggerenberg and E Bertelsmann *Erasmus: Superior Court Practice* 2 ed vol 1 (loose-leaf) at D1-186.

³ *Wessels en Andere v Sinodale Kerkkantoor Kommissie van die Nederduitse Gereformeerde Kerk, OVS* 1978 (3) SA 716 (A) at 725H; *Cabinet of the Transitional Government for the Territory of South West Africa v Eins* 1988 (3) SA 369 11 (A) at 388B–E.

⁴ *Jacobs en 'n Ander v Waks en Andere* [1991] ZASCA 152; 1992 (1) SA 521 (A) at 534D); *Gross and Others v Pentz* 1996 (4) SA 617 (A) 632 B–D.

⁵ *Muller v De Wet NO & Others* 2001(2) SA 489 (W).

⁶ Harms LTC *Amlers Precedents of Pleadings* 10 ed (2024) at 250.

standi is attacked are true.⁷ The test being whether the applicant has a direct and personal interest in the litigation sufficient to render the matter ‘his cause’.⁸ It must accordingly appear *ex facie* the founding papers that the applicant possesses the necessary *locus standi in iudicio*.⁹

[13] This principle ensures that the issue of *locus standi* is determined as a threshold matter, without premature engagement with the merits of the dispute. The enquiry is confined to whether, accepting the applicant’s factual averments at face value, he demonstrated a direct and personal interest sufficient to sustain standing.

[14] If such interest is established *ex facie* the founding papers, the applicant is entitled to have the matter adjudicated. Conversely, if the papers disclose no adequate, current, and legally protectable interest, the objection must succeed. This approach underscores that *locus standi* at this stage is not a matter of evidentiary proof, but rather of legal sufficiency: whether the facts alleged, if true, confer upon the applicant the right to invoke the Court’s jurisdiction.

Submission by parties

[15] Mr Kies, counsel for the first respondent, contends that the applicant suffers from dementia and, as a result, lacks the necessary understanding of the consequences of these proceedings. On this basis, counsel submits that a curator bonis ought to be appointed by this Court to assist the applicant in managing his financial affairs. Reliance is placed on referral letters annexed to the answering affidavit, marked LLF3 and LLF4 both dated 15 April 2024. From these

⁷ *Kuter v SA Pharmacy Board* 1953 (2) SA 307 (T) at 313; *Letseng Diamonds Limited v JCI Limited and Others* [2007] ZAGPHC 119 para 13

⁸ *per* Searle, JP in *Rescue Committee, DRC v Martheze* 1929 CPD 300.

⁹ *Mars Inc v Candy World (Pty) Ltd* 1991 (1) SA 567 (A) p. 575; *Kommissaris van Binnelandse Inkomste v Van der Heever* [1999] 3 All SA 115 (A), 1999 (3) SA 1051 (SCA) para. 10”.

documents, it appears that the first respondent approached Dr Bosman on suspicion that the applicant may be suffering from dementia, citing behavioural changes. Dr Bosman, in turn, referred the applicant to MD Inc for further assessment.

[16] The provisional diagnosis recorded at the Emergency Centre of MD was ‘dementia decline baseline’, with no follow-up date provided. It is further noted that the applicant was scheduled to attend a psychiatric assessment at MPDH ‘the coming Tuesday’ but failed to do so. Based on the information furnished by the first respondent, the medical practitioner suspected that the applicant was developing dementia.

[17] Counsel submitted further letters authored by Dr Zirkia Joubert, a specialist physician, annexed to the first respondent’s papers and marked LLF5 and LLF6 respectively. In the latter, Dr Joubert recorded that the first respondent had informed him that the applicant was diagnosed with dementia, making reference to the earlier referral letter LLF4. On the strength of these letters, counsel maintains that the applicant lacks the necessary understanding of the present proceedings. On this basis, counsel asserts that the first respondent undertook to continue caring for the applicant, whilst the applicant enjoys the fruits of the property in accordance with what she describes as his initial request.

[18] Mr Prinsloo, counsel for the applicant, denied that the applicant has been diagnosed with dementia. In support of this denial, he relies upon the report of Dr Fortuin, a specialist psychiatrist, annexed to the applicant’s papers and marked RA1. Dr Fortuin assessed the applicant on 2 April 2025 and recorded that the applicant has no history of mental illness. The doctor’s assessment further confirms that the applicant’s cognition is intact, with no clinical signs of

Alzheimer's disease. This evidence directly rebuts the first respondent's contention that the applicant lacks the necessary understanding of the proceedings. It demonstrates that he remains capable of managing his own affairs and of prosecuting this application.

Discussion

[19] Save for Dr Joubert recording that he had been informed by the first respondent that the applicant was diagnosed with dementia, there is no finding made by him, in his personal capacity as a medical practitioner, that the applicant indeed suffers from such condition. Similarly, the attending doctors at the Emergency Centre furnished no conclusive report indicating that the applicant has dementia. No follow-up date was provided to the applicant, and, as with Dr Joubert, the referral by Dr Bosman was premised upon information supplied by the first respondent rather than upon independent clinical findings.

[20] The alleged dementia upon which the first respondent seeks to rely on was not independently diagnosed by any of the doctors concerned. On the contrary, the evidence demonstrates that it was the first respondent herself who conveyed her suspicions, which proved unfounded. In the absence of any definitive medical diagnosis, the first respondent's reliance on these referrals cannot, in law, displace the applicant's standing.

[21] The applicant, by contrast, has placed before the Court conclusive evidence in the form of the specialist psychiatric report of Dr Fortuin. That report expressly rules out any possibility of dementia, recording that the applicant's cognition is intact and that he has no history of mental illness. The first respondent has tendered no evidence capable of contradicting or displacing this assessment. In the absence of any material evidence to gainsay Dr Fortuin's findings, I am unable to find that the applicant lacks the requisite understanding

of the proceedings. The first respondent's reliance upon an alleged diagnosis of dementia is accordingly without foundation.

[22] The threshold enquiry remains whether, on the facts alleged in the founding papers, the applicant discloses a direct and personal interest sufficient to sustain *locus standi*. In my view, the applicant has succeeded in demonstrating such interest by virtue of his ownership of the property. Mere conjecture of hearsay-based medical references, unsupported by conclusive clinical findings, fall short of establishing legal incapacity. The first respondent's reliance upon an alleged diagnosis of dementia is accordingly untenable and cannot avail her in displacing the applicant's standing. Accordingly, the point in limine premised upon lack of *locus standi* falls to be dismissed.

[23] Having established that the applicant does indeed possess the necessary *locus standi* to institute these proceedings, the enquiry must now advance to the next threshold issue. That is whether it was incumbent upon the applicant, as a matter of procedural necessity, to first exhaust the mediation process contemplated in Rule 41A of the Uniform Rules before approaching this Court for relief.

Rule 41A

[24] Rule 41A of the Uniform Rules of Court came into operation on 9 March 2020. Its underlying objective is to render it mandatory for litigating parties *to consider mediation* at the inception of proceedings. The Rule imposes upon litigants a procedural obligation to consider mediation as an alternative dispute resolution mechanism at the earliest stage of litigation, thereby seeking to curtail protracted and costly litigation adversarial processes. The emphasis is not upon compelling parties to submit to mediation, but rather upon ensuring

that each litigant formally records a considered position on whether mediation should be pursued. Rule 41A (1) provides as follows:

‘a voluntary process entered into by agreement between the parties to a dispute, in which an impartial and independent person, the mediator, assists the parties to either resolve the dispute between them, or identify issues upon which agreement can be reached, or explore areas of compromise, or generate options to resolve the dispute, or clarify priorities, by facilitating discussions between the parties and assisting them in their negotiations to resolve the dispute.’ (my emphasis)

[25] The general rule requires that every action or application be accompanied by a Rule 41A notice. It is therefore mandatory for the applicant, when serving an application, to deliver a notice in terms of Rule 41A(2)(a), indicating whether he agrees to or opposes referral of the matter to mediation. A corresponding obligation rests upon the first respondent, who must, before filing opposing papers, deliver a notice in terms of Rule 41A(2)(b) setting out her stance on mediation.

[26] It must be emphasised that Rule 41A does not compel any party to submit to mediation. Nor does it prescribe any sanction for non-compliance. Nonetheless, the court retains its inherent jurisdiction to postpone proceedings and direct the parties to consider mediation where such intervention would serve the interests of justice.

Discussion

[27] It is common cause that, in the present matter, the applicant duly delivered his notice in terms of Rule 41A(2)(a), expressly opposing referral of the dispute to mediation. This compliance demonstrates adherence to the mandatory procedural requirement imposed upon him at the commencement of proceedings. By contrast, no notice was delivered by the first respondent in terms of Rule 41A(2)(b) indicating her willingness to mediate. The first

respondent's omission accordingly constitutes a failure to discharge her corresponding obligation under Rule 41A(2)(b).

[28] Unlike the applicant, who duly complied with Rule 41A(2)(a) and made his intention known by opposing referral of the matter to mediation, the same cannot be said of the first respondent. She failed to comply with her obligation under Rule 41A(2)(b) yet seeks the assistance of this Court. Had the first respondent genuinely wished to resolve the matter through mediation, she could have taken the necessary procedural steps to do so. She cannot belatedly seek to shift responsibility onto the applicant, nor rely upon the resolution of other unrelated disputes between the parties; such as her sexual preference or the return of her sibling to the property. These are peripheral matters which bear no relevance to the present application.

[29] The first respondent's reliance on the applicant not exhausting mediation under Rule 41A(2)(a) cannot be sustained. Rule 41A imposes a procedural duty upon litigants to indicate their stance on mediation, but it does not compel parties to submit thereto. Mediation remains a voluntary process, and the applicant's compliance with Rule 41A(2)(a) stands in contrast to the first respondent's failure to deliver the requisite notice under Rule 41A(2)(b). In my considered view, the point in limine premised upon the applicant's alleged failure to exhaust mediation is misplaced. It is devoid of merit and accordingly falls to be dismissed.

Material Dispute of fact

[30] The principles applicable to the determination of facts where disputes arise in motion proceedings were authoritatively set out in *Plascon-Evans*

*Paints Ltd v Van Riebeeck Paints (Pty) Ltd.*¹⁰ The rule is that final relief may be granted in application proceedings only if the facts as stated by the first respondent, together with those facts put forward by the applicant which are admitted by the first respondent, justify the relief sought.

[31] This principle is subject to the qualification that where the first respondent's denial of the applicant's allegations does not raise a real, genuine, or bona fide dispute of fact, the Court is entitled to reject such denial and determine the matter on the papers. Put differently, a bare denial of the applicant's material averments, or the raising of fictitious or insubstantial disputes, cannot suffice to defeat an application. A pragmatic and common-sense evaluation of the affidavits is required, with due regard to whether the first respondent's denials genuinely raise a real, bona fide dispute of fact. The Court must therefore assess the verisimilitude of the respondent's version, and whether it demonstrates serious and unambiguous engagement with the applicant's allegations.

[32] It is therefore incumbent upon the Court to adopt a robust and pragmatic approach when confronted with disputes of fact in motion proceedings. Were it otherwise, the effective functioning of the Court could be hamstrung and circumvented by the most simple and blatant stratagems. The Court must not hesitate to decide an issue of fact on affidavit merely because such determination may prove difficult. The rationale underlying this approach is that motion proceedings are designed to resolve legal issues on common cause facts, not to adjudicate contested factual disputes. Where a material dispute of fact is reasonably foreseeable, the matter ought properly to be pursued by way of action proceedings, thereby permitting oral evidence and cross-examination to ventilate the issues fully.

¹⁰*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) and *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235 – G.

[33] In the present matter, the application is founded upon a deed of sale agreement. This is supported by annexure FA2, duly signed by both parties. The salient terms of the agreement may be summarised as follows:

- (a) The first respondent undertook to purchase the property for the sum of R650 000.
- (b) No deposit was payable.
- (c) The balance of the purchase price was to be paid upon registration of transfer into the first respondent's name.
- (d) In the event of the first respondent failing to fulfil, on the due date, any of the terms and conditions of the deed of sale, the applicant or his agent would be entitled either to cancel the sale by registered letter addressed to the first respondent, or to claim immediate payment of the whole purchase price.

[34] Both parties do not dispute the terms embodied in the sale agreement. Pursuant thereto, the property was transferred and registered at the Deeds Office. The deed of transfer records that Mr Maart informed the Registrar of Deeds ("second respondent") that the property was sold by private treaty, subject to the reservation of a life usufruct in favour of the applicant. Once more this was not placed in dispute by the first respondent.

[35] What the first respondent appears to dispute is her obligation to pay the purchase price. According to her, she was not required to make any payment, contending instead that the amount stipulated in the sale agreement was in lieu of her undertaking to care for the applicant. This contention stands in direct contrast to the correspondence of her attorney, Mr Maart, annexed as FA8 in the record. In that letter, Mr Maart expressly recorded that it was the applicant's intention to *sell the property* to the first respondent, subject to the reservation of a life usufruct in favour of the applicant. The respondent's contention stands in

direct contrast to the correspondence of Mr Maart. In that letter, Mr Maart expressly recorded that it was the applicant's intention to *sell the property* to the first respondent, subject to the reservation of a life usufruct in favour of the applicant. Notably, Mr Maart made no mention of there being no sale of property, nor of the purchase price being substituted by a caregiving arrangement. On the contrary, his correspondence confirms the very representation made to the Deeds Office upon registration of transfer. The deed of transfer itself reflects that the property was *sold* by private treaty. In my view, this reduces the matter to a single decisive issue: which is, the applicant never intended to transfer the property to the first respondent free of charge.

[36] Upon careful consideration of the affidavits and the submissions advanced by both counsel, I am satisfied that there exists no genuine dispute of fact which necessitates referral to oral evidence or trial. The terms of the agreement upon which the application is founded are common cause and undisputed. The issues raised by the first respondent, such as the applicant's alleged disapproval of her same-sex relationship or the return of her brother to the property, are in my view peripheral matters. They bear no relevance to the operative terms of the agreement and do not create a material dispute requiring ventilation at trial. It is my considered view that the *Plascon Evans* Rule finds no application in this matter. In the result, the point in limine premised upon the existence of a dispute of fact is without merit and falls to be dismissed. With all three preliminary objections having been disposed of, the Court now turns to the merits of the case for consideration.

Has the applicant established a proper case on merits

[37] The applicant's counsel contends that the agreement was never perfected and was accordingly validly cancelled. He points out that the agreement expressly stipulated that the purchase price would be paid upon registration of

transfer of the property, which did not occur. On this basis, he asserts that the applicant was entitled to exercise his contractual right of cancellation, which he duly did.

[38] Counsel further avers that the power of attorney records the property as having been *sold* for the stipulated purchase price. This very document was relied upon by the second respondent in effecting transfer. Counsel submits that such reliance renders the transfer defective, as ownership cannot validly pass in the absence of payment of the purchase price. In the result, counsel maintains that a proper case has been made out for the relief sought.

[39] The first respondent's counsel does not dispute that no payment of the purchase price was made. He argued that the first respondent's case, is premised upon the fact that the property was registered in the first respondent's name pursuant to the applicant's own volition, motivated by his apprehension of being taken advantage of by his sons. Counsel submits that the applicant's subsequent change of mind, after a period of three years following registration, would operate to his own detriment and undermine his security. On that basis, counsel contends that the application ought to be dismissed.

[40] It is indeed unfortunate that this dispute arises within the context of family relations, for courts have consistently emphasised that such conflicts are best resolved outside of litigation, so as to avoid further strain upon familial bonds. The first respondent seeks to present to this Court that her reluctance to transfer the property back to the applicant is motivated by concern for his protection and safety. Regrettably, notwithstanding the first respondent's professed concern for the applicant's welfare, she has nonetheless drawn him into litigation, fully aware of his advanced age. This conduct, in my view, reveals a pursuit of self-interest under the guise of protection. The first

respondent has gone so far as to depict the applicant as suffering from dementia and incapable of managing his financial affairs, while simultaneously failing to discharge her obligation to pay the agreed purchase price. Her stance amounts to an attempt to retain property that does not lawfully belong to her, cloaked in the rhetoric of care and concern.

[41] The Older Persons Act¹¹, as amended, was enacted precisely to guard against circumstances such as these presented in the instant matter. The Act seeks to establish robust mechanisms to protect vulnerable older individuals from property dispossession, familial pressure, and financial abuse. In particular, the legislature has expressly guaranteed older persons the right to protection against abuse relating to property, land rights, and inheritance, as envisaged in sections 7B, 25, and 30 of the Act. Section 5(2)(a) is of especial significance, affirming the right of older persons to protection in respect of their property. This provision underscores the imperative that courts must act as vigilant guardians of the statutory and constitutional rights of older persons, ensuring that their dignity and autonomy are not eroded by exploitative arrangements or inequitable conduct.

[42] The applicant, a 77-year-old pensioner, falls squarely within the protective ambit of these provisions. He is entitled to the full benefit of the statutory safeguards, and it is incumbent upon this Court to give effect to them. In doing so, the Court not only enforces the letter of the Act but also advances its spirit, which is to secure the well-being, safety, and rights of the older persons such as the applicant, against precisely the forms of abuse alleged in the present dispute.

[43] The first respondent is fully aware that she never paid the purchase price as stipulated in the deed of sale. In terms of the agreement, failure to pay

¹¹ Older Persons Act 13 of 2006 as amended

entitled the applicant to cancel the agreement. The fact that the applicant elected to approach the Court three years after registration does not detract from the validity of his claim, nor does it extinguish the first respondent contractual obligations. In my considered view, the applicant has established a proper case for the relief sought. He has demonstrated breach of agreement by the first respondent and has validly exercised his right of cancellation. Accordingly, I find that he is entitled to the relief sought.

Costs

[44] As regards the question of costs, this application falls within the category of matters that may properly be regarded as frivolous and an abuse of the Court's process. The first respondent was fully aware that she had no defence to the applicant's claim, yet she elected to oppose the matter. Her conduct demonstrates a deliberate attempt to delay the re-transfer of the property to the applicant, notwithstanding her knowledge of the contractual breach.

[45] In these circumstances, an ordinary costs order would not suffice to mark the Court's disapproval of such conduct. A punitive order is warranted both to compensate the applicant for the unnecessary expense incurred and to deter litigants from abusing the process of Court by advancing applications devoid of merit. I accordingly find that the only fitting order is one on the attorney and client scale. The respondent will therefore be ordered to pay the applicant's costs of this application on such punitive scale.

Order

[46] In the result, I make the following order:

- a) The first respondent's points in limine are dismissed.

- b) The Deed of Sale concluded between the applicant and the first respondent on 15 February 2022 for the sale of the immovable property situated at 3[...] A[...] Road, C[...], Cape Town is hereby cancelled.
- (c) The transfer of the property which was effected by the second respondent on 18 May 2022 is set aside.
- (d) The second respondent is ordered to facilitate the transfer of the property into the name of the applicant, being the previous title holder, subject to the same terms and conditions of the title as existed immediately prior to the transfer of the property to the first respondent.
- (e) The firm Ashersons Attorneys be hereby appointed as the attorneys to attend to and facilitate the transfer of the property to the applicant from the first respondent.
- (f) The first respondent is ordered to sign all documents and take whatever steps necessary to give effect to (d) above, failing which the sheriff of the Court or his lawful deputy is authorised and directed to sign any such documents as are required to effect transfer of the property to the applicant as contemplated in (d) above.
- (g) The first respondent is ordered to pay costs consequent upon transfer of the property to the applicant.
- (h) The first respondent is ordered to pay costs of the application, including costs of counsel, on scale B.

S YAKE

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant: Adv. B. Prinsloo

Instructed by: Ashersons Attorneys

For the Respondents: Adv. R. Kies

Instructed by: L. Maart Attorneys