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

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

21 May 2026

DATE

SM MARITZ AJ

SIGNATURE

**CASE NO: 119661/2023**

In the matter between:

**INFORMAT SOLUTIONS (PTY) LTD**

(Registration Number: 2015/103655/07)

First Applicant

**GLEN LIFE PROPERTIES CLOSE CORPORATION**

(Registration Number: 2004/047179/23)

Second Applicant

**DELBERG ATTORNEYS INC**

(Registration Number: 1990/019077/21)

Third Applicant

and

**PK AND TS INVESTMENTS (PTY) LTD**

(Registration Number: 2022/721427/07)

Respondent

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## JUDGMENT

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### MARITZ AJ

#### A. INTRODUCTION

[1] This is an interlocutory application by Informat Solutions (Pty) Ltd ("the First Applicant") and Glen Life Properties Close Corporation ("the Second Applicant") for leave to amend their Plea to the Respondent's Particulars of Claim in terms of Rule 28(4) of the Uniform Rules of Court. The Respondent, PK and TS Investments (Pty) Ltd, opposes the application. The Respondent raises two points *in limine* — non-compliance with Rule 28(4) and lack of authority and personal knowledge of the deponent to the First Applicant's Founding Affidavit — and four substantive grounds of opposition: withdrawal of admissions without proper justification; *mala fides* and abuse of process; the amendment rendering the Plea and Counterclaim excipiable; and irreparable prejudice.

[2] A condonation application was filed belatedly together with the Replying Affidavit on 18 September 2025, in respect of the two-day late filing of the Application for Leave to Amend.

#### B. RELEVANT FACTUAL BACKGROUND

##### The Respondent's claim

[3] The Respondent issued summons on 15 November 2023 (Case No 119661/2023) arising from an alleged sale of an agricultural property — Freehold Stand No: PTN 2 of Holding 133 Township, P[...] P[...] AH, 5[...] S[...] Road, P[...] P[...], Midrand — at a purchase price of R1 800 000.00. The Respondent pursues three claims: Claim A for interest of R104 823.79; Claim B for R256 500.00 (being 14.25% of the purchase price as a delay penalty under paragraph 13 of the Offer to Purchase); and Claim C in the alternative for R204 000.00 loss of income, together with costs.

[4] The Respondent's case is founded upon an Offer to Purchase Agreement. It avers that the agreement was originally concluded on 12 August 2022 and 20 August 2022 between the First Applicant (as seller) and Ms. Prudence Khumalo and Mr.

Timothy Sibanda personally as purchasers. Because the property is classified as an agricultural holding — which prevents more than one name appearing on the title deed — the purchasers' personal names were subsequently replaced by the Respondent company as purchaser. The Respondent contends this was done upon instruction from, and through, the Second Applicant (Glen Life Properties CC), which throughout the transaction operated under the "*Glenlife Properties*" letterhead and which is alleged to have been the First Applicant's duly authorised agent.

- [5] The Respondent avers that the First Applicant was at all material times aware of and consented to this substitution: that all correspondence was channelled through the Second Applicant; that the conveyancing attorneys (the Third Defendant, Delberg Attorneys Inc) were instructed through the Second Applicant; and that the First Applicant's director thereafter signed the transfer documents with full knowledge of the purchaser's identity. The Respondent placed Annexures AA10 to AA29 before the Court in support of this version, comprising the altered Offer to Purchase on the Glenlife Properties letterhead (AA10), a chain of email correspondence spanning the transaction (AA11–AA21), a consent document (AA22), further post-transaction correspondence (AA23–AA28), and the transfer documents said to have been signed by the First Applicant's director (AA29).

### **Earlier procedural history**

- [6] The Third Defendant filed its Plea on 11 January 2024. The Respondent filed its Replication on 2 February 2024. On 6 August 2024 the Respondent withdrew its action against the Third Defendant. An application for default judgment was brought against the First and Second Applicants, and by order of Van der Westhuizen J dated 14 February 2025 the matter was removed from the roll and the Applicants were directed to file their Notice of Intention to Defendant and Plea and Counterclaim, if any, within the stipulated time periods provided for in the order.
- [7] On 28 February 2025, the First and Second Applicants delivered their Notice of Intention to Defend. A Notice of Bar was filed on 1 April 2025. The Applicants filed their Plea and Counterclaim on 7 April 2025 and their Notice of Intention to Defend was formally filed on 22 April 2025. In that Plea, the First and Second Applicants admitted the existence and terms of the Offer to Purchase Agreement as annexed to the Respondent's Particulars of Claim.

- [8] On 2 May 2025 the Respondent launched an Application for Summary Judgment. The Applicants filed a Notice to Oppose on 9 June 2025. It was during preparation to oppose the Summary Judgment Application that the First Applicant's director says he first appreciated that the Offer to Purchase annexed to the Particulars of Claim was not the agreement he had in fact concluded.

#### **The amendment and procedural steps leading to this application**

- [9] On 4 July 2025 the First and Second Applicants served a Notice of Intention to Amend their Plea in terms of Rule 28(1). The Respondent delivered its Rule 28(3) objection on 18 July 2025. Rule 28(4) required the Applicants to lodge their application for leave to amend within 10 court days, i.e. by 1 August 2025.
- [10] On 1 August 2025 at 19h00 the Applicants served the Application for Leave to Amend on the Respondent's attorneys. The application was, however, only filed with the Court on 5 August 2025 — two court days late — and without a condonation application. The Respondent filed its Notice of Intention to Oppose on 15 August 2025. The Respondent's Answering Affidavit was filed on 4 September 2025. On 18 September 2025 the Applicants filed their Replying Affidavit together with a belated Condonation Application. The Respondent filed Heads of Argument on 15 December 2025 and the Applicants filed Heads of Argument on 17 March 2026. The matter was enrolled for hearing on 11 May 2026.

#### **What the Applicants seek to amend and why**

- [11] The Applicants seek to withdraw their admissions to the Offer to Purchase Agreement annexed to the Particulars of Claim and to substitute a version that: (a) denies the document annexed is the agreement actually concluded; (b) alleges the purchaser's details were unilaterally altered without the First Applicant's knowledge or written consent; and (c) avers that no valid deed of alienation complying with section 2(1) of the Alienation of Land Act 68 of 1981 was ever concluded between the First Applicant and the Respondent.
- [12] The explanation offered is that at the time the Plea was filed, the First Applicant was under severe financial constraints that impaired its ability to consult comprehensively with its attorneys and scrutinise the Respondent's annexures. The admission was accordingly made without full appreciation of the document. The

Founding Affidavit also mistakenly recorded the date of conclusion of the original agreement as 2024 rather than 2022 — an error acknowledged as clerical.

- [13] On the legal merits, the Applicants raise two substantive grounds. First, section 2(1) of the Alienation of Land Act 68 of 1981 requires that no alienation of land shall be of any force or effect unless it is contained in a deed of alienation signed by the parties or by their agents acting on written authority. The Applicants aver the altered agreement was never so signed and is accordingly *void ab initio*. Second, clauses 17.1 and 17.2 of the original Offer to Purchase contain a non-variation clause providing that "*no additions to or amendments of this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties.*" Relying on *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren en Andere 1964 (4) SA 760 (A)*, the Applicants contend that any variation not so signed is invalid.
- [14] In the Replying Affidavit the First Applicant's director attached the CIPC disclosure certificate confirming his status as sole director, relied on section 66(1) of the Companies Act 71 of 2008 to establish authority, maintained his factual case, and — significantly — disavowed that the Second Applicant was ever the First Applicant's authorised agent. This last averment is a departure from the version in the existing Plea and creates a conflict of interest between the two Applicants since they are represented by the same attorneys.

### **C. RESPONDENT'S POINTS IN LIMINE**

#### **(a) Non-compliance with Rule 28(4): Rule 28(5) and *Sasol v Penkin***

- [15] The Respondent submits that the two-day late filing of the Application for Leave to Amend means the amendment lapsed under Rule 28(5) of the Uniform Rules and must be treated as *pro non scripto*, requiring the Rule 28 process to be recommenced. Reliance is placed on *Sasol South Africa Ltd t/a Sasol Chemicals v Penkin 2024 (1) SA 272 (GJ)* at paragraph 43. This submission is, with respect, founded on a fundamental misreading both of Rule 28(5) and of that judgment.
- [16] Rule 28(5) provides that if no objection as contemplated in Rule 28(4) is delivered within the period referred to in Rule 28(2), every party who received notice of the proposed amendment shall be deemed to have consented, and the amending party may within 10 days after expiration of the Rule 28(2) period effect the amendment by

delivering the relevant amended pages in terms of Rule 28(7). The text of Rule 28(5) is unambiguous: it operates exclusively in the no-objection scenario. It governs the consequence of a party's failure to object — namely, deemed consent and the right to file amended pages. It says nothing whatsoever about the consequence of a late filing of a Rule 28(4) application for leave to amend in a contested matter where an objection has been delivered. Once a Rule 28(3) objection is lodged, Rule 28(5) has no further role to play. The procedural path is exclusively that of Rule 28(4).

[17] *Sasol v Penkin* does not assist the Respondent. In that case, the defendant served a defective Notice of Intention to Amend. The plaintiff did not deliver a Rule 28(3) objection — it instead gave a Rule 30(2)(b) notice of irregular step. Because there was no Rule 28(3) objection, the position was governed by Rule 28(5): the defendant was required, in the no-objection scenario, to deliver amended pages within the Rule 28(5) period. The defendant failed entirely to deliver any amended pages. The court held at paragraph 43 that the amendment accordingly lapsed — expressly noting that it "*could not find any authority, one way or another, on this issue*" and was articulating what it regarded as long-standing practice. Three features render *Sasol v Penkin* inapplicable here: first, the lapse arose from failure to deliver amended pages in the no-objection scenario, not from a late Rule 28(4) application; second, the court itself acknowledged the absence of any authority; third, the procedural posture was wholly different — there was no Rule 28(3) objection at all. The Respondent has misread a decision confined to the Rule 28(5) no-objection scenario and sought to transplant it into the wholly distinct Rule 28(4) contested scenario. That submission is rejected.

**(b) Condonation**

[18] Although Rule 28(5) does not cause the amendment to lapse, the Applicants' late filing of the Rule 28(4) application by two court days is a non-compliance with the Rules requiring the Court's indulgence in terms of Rule 27. The applicable approach requires the Court to consider holistically: the nature and degree of non-compliance; the explanation therefor; any prejudice caused to the Respondent; and the applicant's prospects of success on the main application. The overriding consideration is the interests of justice: *Matjhabeng Local Municipality v Eskom Holdings Limited and Others 2018 (1) SA 1 (CC) at paragraph 72; State Attorney v Notshe (2022/00966) [2025] ZAGPJHC 206 at paragraph 4; Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd [2013] ZACC 48; Ferris v FirstRand*

*Bank Ltd 2014 (3) SA 39 (CC); Nair v Telkom SOC Ltd & Others (JR59/2020) [2021] ZALCJHB 449 at paragraph 11.*

[19] The degree of non-compliance is two court days — a minimal delay. The Application for Leave to Amend was served on the Respondent's attorneys on the due date, 1 August 2025, at 19h00. The Respondent was accordingly in actual possession of the papers by the due date; the only failure was an administrative omission in filing with the Court two days later. That omission was not wilful or reckless — it is explained in the condonation application as an inadvertent administrative oversight in distinguishing between service and filing. The Respondent has not demonstrated any specific prejudice flowing from the two-day filing delay itself, as distinct from its substantive objections to the amendment. As the Constitutional Court confirmed in *Matjhabeng supra at paragraph 72*, where no prejudice has been demonstrated, the interests of justice demand that condonation be granted, particularly where the degree of non-compliance is minimal. Taking these factors holistically, condonation is granted. The first point *in limine* is dismissed.

**(c) Authority and personal knowledge of the deponent**

[20] The Respondent challenges the deponent's authority to institute the proceedings on behalf of the First Applicant and his personal knowledge of facts relating to the Second Applicant, relying on *Delico Investments 10 (Pty) Ltd v City of Johannesburg Metropolitan Municipality (116276/2024) (Theron AJ, unreported, 22 October 2025)*; *Diliculo Properties (Pty) Ltd v City of Johannesburg & Others (2023-010531) (Putter AJ, unreported, 15 May 2025)*; and *FirstRand Bank Ltd v Kruger 2017 (1) SA 533 (GJ)*.

[21] This point fails on two independent and cumulative grounds. First, on authority: the CIPC disclosure certificate attached to the Replying Affidavit confirms the deponent is the sole director of the First Applicant. In terms of section 66(1) of the Companies Act 71 of 2008, where a company has a sole director, that director constitutes the board and is vested with authority to exercise all the powers and perform all the functions of the company. No additional resolution or external authorisation is required. Second, and more fundamentally, the Respondent employed the wrong procedural vehicle. The proper mechanism to challenge a litigant's authority to institute motion proceedings is Uniform Rule 7(1), which requires the respondent to deliver a notice calling on the other party to furnish proof of authority. The Respondent did not invoke Rule 7. It

instead sought to raise the objection as a point *in limine* in its Answering Affidavit. This is impermissible: *Ganes and Another v Telecom Namibia Ltd 2004 (3) SA 615 (SCA) at paragraph 19; Unlawful Occupiers of the School Site v City of Johannesburg 2005 (4) SA 199 (SCA) at paragraph 16*. Once Rule 7(1) is available, a party may not substitute textual dissection of the founding affidavit as an alternative. On personal knowledge: the Respondent has not identified any specific factual averment concerning the Second Applicant that was inadmissible or outside the deponent's knowledge; and in *Ganes supra* at paragraph 19 the SCA confirmed that a deponent to an affidavit in motion proceedings need not be separately authorised by the relevant party to depose to it. The second point *in limine* is dismissed.

#### D. MERITS

##### **What the Court is required to do at the stage of an application for leave to amend**

[22] Before turning to the specific grounds of opposition, it is necessary to identify with precision what the Court is and is not required to do when considering an application for leave to amend. The importance of this is heightened in the present matter because much of the Respondent's opposition is, at its core, a submission that the Applicants' version is factually false and that the documentary record proves it. The Court must resist the temptation to determine those factual disputes at this stage.

[23] The Court hearing an application for leave to amend exercises a broad discretion, which must be exercised judicially upon a consideration of all the relevant circumstances: *Brocsand (Pty) Ltd v Tip Trans Resources (Pty) Ltd 2021 (5) SA 457 (SCA) at paragraph 15; Embling and Another v Two Oceans Aquarium CC 2000 (3) SA 691 (C) at 694H*. The general approach was stated by Wessels J in *Whittaker v Roos; Morent v Roos (TPD)*, as cited with approval in *Adel Fresh Fruit CC v Producer Ally (Pty) Ltd (case no. 4111/2014, ECGHC)*:

*"This court has the greatest latitude in granting amendments, and it is very necessary that it should have. The object of the court is to do justice between the parties. It is not a game that we are playing, in which, if some mistake is made, the forfeit is claimed. We are here for*

*the purpose of seeing that we have a true account of what actually took place, and we are not going to give a decision upon what we know to be wrong facts ... [T]he court will not look to technicalities, but we will see what the real position is between the parties."*

[24] The practical principle distilled from the authorities is this: an amendment will be allowed unless it is (a) *mala fide*, or (b) will cause the other party such injustice as cannot be compensated by a costs order: *Moolman v Estate Moolman* 1927 CPD 27 at 29; *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH* 2024 (1) SA 331 (CC) at paragraphs 64–67; *Media 24 (Pty) Ltd v Nhleko & Another* (109/22) [2023] ZASCA 77 at paragraph 16. Where the proposed amendment involves the withdrawal of an admission, a proper and sufficient explanation for the admission and for the intention to withdraw it is additionally required: *Bellairs v Hodnett and Another* 1978 (1) SA 1109 (A) at 1150F–H; *President-Versekeringsmaatskappy Bpk v Moodley* 1964 (4) SA 109 (T) at 110H–111A; *JR Janisch (Pty) Ltd v WM Spilhaus & Co (WP) (Pty) Ltd* 1992 (1) SA 167 (C) at 170. Prejudice to the other party must also be weighed: *Amond v South African Mutual Fire and General Insurance Co Ltd* 1971 (2) SA 611 (N) at 614H per Leon J.

[25] Critically, the court at the amendment stage does not adjudicate the factual dispute between the parties. It does not determine which version is more probable or who will succeed at trial. The enquiry is not: "*does the evidence show that the Applicants' version is true?*" The enquiry is: "*have the Applicants put up a version which, if true, would constitute a triable defence, have they sufficiently explained the admissions they seek to withdraw, and is there any reason in law why the amendment should be refused?*" This distinction matters enormously in the present case. Much of what the Respondent argues in opposition amounts to a submission that it will win at trial — a submission which, however well founded it may be, does not, without more, constitute grounds for refusing an amendment. The appropriate forum for resolving disputes about whether the First Applicant consented to the substitution of the purchaser, and whether AA22 and AA29 establish that consent, is a trial at which oral evidence is led and witnesses are cross-examined.

### **Withdrawal of admissions: the legal requirements and their application**

- [26] In their Plea of 7 April 2025, the Applicants admitted the existence and terms of the Offer to Purchase Agreement as annexed to the Respondent's Particulars of Claim. They now seek to withdraw those admissions. The applicable standard, derived from *Bellairs v Hodnett* and the companion authorities, requires three things: (i) the admission must have been made in error — through inadvertence, mistake, or inadequate appreciation of the document at the time of pleading; (ii) the explanation for the error must be satisfactory and sufficient to establish the *bona fides* of the withdrawal: *President-Versekeringsmaatskappy Bpk v Moodley supra at 110H*; and (iii) the withdrawal must not cause the opposing party prejudice incapable of being cured by a costs order: *Amond supra at 614H*. In *Bellairs v Hodnett* itself, the Appellate Division refused the withdrawal because "*the pleadings show a clear appreciation of the separate identities*" — meaning the admission was not an error at all but an informed, considered pleading position.
- [27] The Respondent's Answering Affidavit builds a detailed factual edifice, supported by Annexures AA10 to AA29, contending that the admission was made with full appreciation and that the version now sought to be introduced is a fabrication. In summary: Annexure AA10 is the altered Offer to Purchase on the Glenlife Properties letterhead. Annexures AA11 to AA21 are a chain of emails which the Respondent says demonstrate that the Second Applicant — as agent for the First Applicant — conducted all transaction correspondence, that the First Applicant was informed of the need to substitute the purchaser's identity due to the agricultural holding registration constraint, and that the conveyancers were instructed accordingly. Annexure AA22 is a document described as evidencing the First Applicant's express consent to the substitution of the purchaser. Annexures AA23 to AA28 are further post-transaction correspondence. Annexure AA29 is described as the transfer documents subsequently signed by the First Applicant's director. The Respondent submits that the director signed documents naming the Respondent company as purchaser knowing full well what he was signing — a submission that, if correct, would render the "*error*" explanation wholly implausible.
- [28] The Respondent invokes *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E–635D*, submitting that its version of the facts, placed under oath and not adequately disputed by the Applicants in the Replying Affidavit, must prevail. There is force in this submission. The Applicants' Replying Affidavit

does not challenge the authenticity of the correspondence (AA11 to AA21). It does not identify precisely which documents it disputes or explain specifically why AA22 does not establish consent. It does not deny that transfer documents were signed. Its answer — that the director was processing multiple concurrent transfers and focused on the property description rather than the purchaser's identity — is general and unparticularised.

- [29] That evidential insufficiency is a genuine concern that properly weighs against the Applicants. However, as noted above, the enquiry at the amendment stage is not who will win at trial. The *Plascon-Evans* principle governs the determination of factual disputes in motion proceedings on the papers — it does not mean that a party whose version is less convincing on the papers is precluded from seeking an amendment to ventilate that version at trial, unless the version is so clearly untenable as to be incredible or fraudulent on its face. The question is whether the explanation is sufficient to establish *bona fides* at the amendment threshold, not whether it will succeed at trial.
- [30] The explanation offered — that the Plea was filed under financial pressure and without adequate scrutiny of the annexures — is a recognised category of inadvertence in pleading. Unlike in *Bellairs v Hodnett*, where the pleadings themselves showed a clear appreciation of the very distinction being denied, the Applicants here say they did not focus on the document at all. That is a different kind of alleged error. Whether it is ultimately credible is for a trial court to assess after cross-examination.
- [31] That said, this Court does not shut its eyes to the evidentiary record. The Respondent's case on the papers is strong. Annexure AA22 — the alleged express consent document — and Annexure AA29 — the signed transfer documents — represent the most significant hurdles the Applicants must overcome at trial. The director's explanation for signing AA29 without appreciating the identity of the purchaser will be carefully tested. The Respondent is well-placed to demonstrate at trial that the admission was made with knowledge. But the question of whether it will succeed in doing so is a trial question. On the papers as they stand, the explanation is not so inherently implausible or so clearly a fabrication that it must be refused at the amendment stage. The repeated date errors (recording 2024 instead of 2022) are troubling, but on the standard confirmed in *Standard Bank of South Africa Ltd v Phalane and Another* [2022] ZAGPJHC 69 at paragraph 19, obvious errors that

cause no specific prejudice do not prevent adjudication on true issues. Whether they reflect fabrication is again for trial. The withdrawal is accordingly permitted, subject to the overall outcome of the application.

### **Whether the amendment raises a triable issue**

- [32] The Applicants' proposed amended Plea must raise a triable defence — one that is legally viable if the facts are proved: *Brocsand supra at paragraph 15; IPC Plumbing SA (Pty) Ltd v Azrapart (Pty) Ltd [2025] ZAGPPHC 463 at paragraph 10*. The two defences raised satisfy this requirement.
- [33] First: section 2(1) of the Alienation of Land Act 68 of 1981 is peremptory. If the altered Offer to Purchase was not signed by the First Applicant or by an agent acting under written authority, it is *void ab initio*. If proved, this defence is decisive.
- [34] Second: the Shifren non-variation clause (clauses 17.1 and 17.2 of the original Offer to Purchase) renders any amendment not signed by the parties invalid. If the First Applicant never signed the altered document, the substitution of the purchaser is of no force or effect. This too, if proved, defeats the Respondent's cause of action in its entirety.
- [35] Whether these defences will succeed depends on facts — the content and circumstances of AA22 and AA29 in particular — that must be determined at trial. Both defences are legally coherent and potentially decisive. They are plainly triable issues.

### **Mala fides and abuse of process**

- [36] The Respondent submits that the amendment is not *bona fide* but is a tactical device to avoid the Summary Judgment Application. *Mala fides* in the context of an amendment application requires that the Court be satisfied that the amendment is advanced for a purpose extraneous to the proper ventilation of a genuine dispute: *Beinash v Wixley 1997 (3) SA 721 (SCA) at 734*. Timing alone does not establish bad faith. The legal defences raised — the Alienation of Land Act and the Shifren principle — are genuine and substantive. The fact that the documentary record is unfavourable to the Applicants does not convert their pursuit of an amendment into a *mala fide* act. The Respondent's submission amounts to saying that because it

has a strong case, the Applicants should not be allowed to test it at trial. That is not the law. This ground fails.

### **Whether the amendment renders the pleadings excipiable**

[37] The Respondent relies on *R M van de Ghinste & Co (Pty) Ltd v Van de Ghinste 1980 (1) SA 250 (C) at 258H–259A* for the proposition that an amendment which would render a pleading excipiable should not be allowed. This is an accepted principle of law. In *De Klerk v ABSA Bank Ltd*, cited with approval in *M M v H P (5182/2022P) [2024] ZAKZPHC 8* at paragraph 8, Van Dijkhorst J stated:

*"An amendment which would render a pleading excipiable should not be allowed. Whether a pleading would or would not become excipiable is a matter of law which should be decided by the Court hearing the application for amendment. It would be incorrect, in my view, to hold that it is arguable that the amendment would not render the pleading excipiable, allow it, and send the parties away to prepare for another battle on exception on the same point."*

[38] The court must therefore decide the excipiability question on the papers, accepting as correct the allegations in the proposed amended Plea: *IPC Plumbing supra* at paragraph 10; *Lizinex (Pty) Ltd v FPC Solutions (Pty) Ltd [2023] ZAGPJHC 1261* at paragraph 31. The onus is on the Respondent to establish that the amended pleading would be excipiable on every reasonable interpretation.

[39] The Respondent raises four excipiability grounds. First: the amended Plea denies the Offer to Purchase while the Counterclaim simultaneously relies on the same transaction. The Respondent invokes the approbation-reprobation doctrine — a party may not blow hot and cold: *Cross v Ferreira 1951 (2) SA 435 (C)*. The Applicants respond that a Counterclaim is a separate and independent pleading that cannot render a Plea excipiable: *S v Kolea [2010] ZAFSHC 171* at paragraph 21. This is legally correct. Excipiability of the Plea is assessed on the Plea itself. The contradiction between the Plea and the Counterclaim may create practical difficulties for the Applicants at trial and may require separate amendment of the Counterclaim, but it does not render the Plea itself excipiable. Second: the interchangeable references to "Applicant" and "Applicants" are said to render the pleading vague and embarrassing. The standard for vagueness and embarrassment requires the

pleading to be so unclear that the opposing party cannot identify the case it must meet and that this causes real prejudice: *Ferris v Naledi Local Municipality [2022] ZANWHC 55* at paragraph 12. The Respondent has not identified specific paragraphs and demonstrated that the amended Plea is excipiable on every reasonable interpretation on this ground. The defect, if it exists, is correctable in the drafting. Third: the First Applicant's disavowal of the Second Applicant's agency creates an internal contradiction and a conflict of interest. This is a genuine concern of real gravity — the two Applicants now appear to occupy antagonistic positions, and the Applicants' attorneys must consider urgently whether they can continue to act for both clients without breaching their professional obligations. However, this concern does not, on the present papers, establish that the amended Plea itself is excipiable on every reasonable interpretation. Fourth: the amended Plea raises triable issues, as demonstrated above, and is not excipiable on the ground of failure to disclose a defence.

[40] The Respondent has not discharged the onus of establishing excipiability on any of the four grounds advanced. However, given the very real tensions created by the disavowal of agency and the inconsistency between the Plea and the Counterclaim, the Applicants are directed to file the amended Plea in a form that resolves the interchangeable reference problem, and to align or separately amend the Counterclaim within 15 court days of this order. The Respondent retains the full right to except to any pleading that remains defective.

### **Prejudice**

[41] The loss of the benefit of an admission does not, without more, constitute irreparable prejudice justifying the refusal of an amendment. If it did, no withdrawal of an admission could ever be allowed. Specific, demonstrable prejudice beyond the loss of that benefit is required: *Media 24 supra* at paragraph 16. The Respondent has not identified such specific prejudice on the papers. It retains all its documentary evidence — Annexures AA10 to AA29 — its version under oath in the Answering Affidavit, and its right to challenge the Applicants' version fully at trial. Conversely, refusing the amendment would compel a trial on facts that may be incorrect and on admissions that may have been made inadvertently. The interests of justice require the real dispute to be ventilated at trial.

### **E. CONCLUSION**

[42] Both points *in limine* are dismissed. The Respondent's reliance on Rule 28(5) and *Sasol v Penkin* is misconceived: Rule 28(5) applies only in the no-objection scenario and has no bearing on the consequences of a late Rule 28(4) application. Condonation is granted: the delay is two court days, the Respondent was in possession of the papers on the due date, and no prejudice from the delay itself has been demonstrated. The authority point fails because the deponent is the sole director of the First Applicant and because the Respondent employed the wrong procedural mechanism.

[43] On the merits: the Applicants have provided a sufficient — though far from compelling — explanation for the admissions and the proposed withdrawal thereof, meeting the threshold established by *Bellairs v Hodnett* and the companion authorities. The proposed amendment raises genuine triable issues of potentially decisive legal significance under the Alienation of Land Act 68 of 1981 and the *Shifren* principle. The amendment is not *mala fide*. The excipiability objections, while raising real concerns — particularly around the agency disavowal and the Plea/Counterclaim tension — are not established with sufficient particularity to justify refusal at this stage. No irreparable prejudice has been demonstrated.

[44] The grant of this application does not mean the Applicants will succeed at trial. The Respondent's documentary case — and in particular Annexures AA22 and AA29 — presents formidable evidentiary challenges that the Applicants' director will need to meet under cross-examination. The withdrawal of the admissions is permitted not because the Court has found the Applicants' version credible, but because it is not so clearly untenable as to be incapable of trial ventilation, and because the law requires that disputes of this nature be resolved on their true merits rather than on procedural admissions made under circumstances of financial pressure.

[45] The Applicants' attorneys are placed on notice that: (a) the potential conflict of interest arising from the First Applicant's disavowal of the Second Applicant's agency must be addressed with both clients as a matter of urgency; (b) the amended Plea must be drafted without the interchangeable vague references complained of by the Respondent; and (c) the Counterclaim must be aligned with the amended Plea or separately amended within the period specified in the order below.

**F. COSTS**

[46] Costs require careful consideration. The first point in limine was founded on a demonstrably erroneous reading of Rule 28(5) — a sub-rule whose plain text does not support the proposition advanced — and on an inapposite invocation of *Sasol v Penkin*. That was not a tenable argument and should not have been pressed. The second point in limine was procedurally incompetent for failure to invoke Rule 7(1). Those points in limine should not have been taken in the form they were. On the merits, however, the Respondent's opposition was not unreasonable: the factual grounds raised — particularly the strength of Annexures AA10 to AA29 — are legitimate and well-founded concerns that warranted a contested hearing. Further, the Applicants' own application was factually defective in material respects: the Founding Affidavit contained repeated and significant date errors; the Replying Affidavit introduced a position (disavowal of agency) that contradicts the existing Plea and creates a conflict of interest; and the Applicants' traversal of the Respondent's detailed documentary record was inadequate. The application was therefore not brought without deficiency. In these circumstances, where the Respondent's procedural points were ill-conceived but its substantive concerns had merit, and where the Applicants succeeded but with a factually deficient application, justice is best served by directing each party to pay its own costs.

**G. ORDER**

The following order is made:

1. Condonation for the late filing of the Application for Leave to Amend is granted.
2. Both points *in limine* raised by the Respondent are dismissed.
3. The Application for Leave to Amend the Plea is granted.
4. The Applicants are directed, within fifteen (15) court days of this order, to deliver the amended Plea in a form that resolves the interchangeable reference defects identified in the Respondent's opposition.
5. The Applicants are further directed, within the same fifteen (15) court day period, to either align the Counterclaim with the amended Plea or to separately amend the

Counterclaim, failing which the Respondent shall be at liberty to take such steps as it may be advised, including delivering an exception.

6. The Applicants' attorneys are directed to consider urgently, in consultation with both Applicants, whether a conflict of interest prevents them from continuing to act for both the First and Second Applicants given the positions adopted in the Replying Affidavit, and to take any steps required by their professional obligations.
7. Each party is ordered to pay its own costs of the application, including the costs of the condonation application.

**BY ORDER**



**SM MARITZ AJ  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA**

**Appearances on behalf of parties:**

Attorneys for Applicants:	Maliseha Attorneys
Counsel for Applicants:	Adv Mxolisi Nene
Attorneys for Respondent:	Mudenda Inc Attorneys
Counsel for Respondent:	Adv John Mouton

Date of Hearing:	11 May 2026
Date of Judgment:	21 May 2026