REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: A24-039699

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

25 June 2026

DATE

[redacted]

SIGNATURE

In the matter between:

SONJA HULLEY First appellant

RENE NORTJE t/a NORTJE ATTORNEYS Second appellant

and

WILLEM ABRAHAM ALEGRA First respondent

ESTELLE REINETTE BRONKHORST Second respondent

This Order is made an Order of Court by the Judge whose name is reflected herein, duly

stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 25 June 2026.

JUDGMENT

CORAM: LIEBENBERG AJ (with whom DU PLESSIS J agrees)

[1] This is an appeal from the Magistrates' Court dismissing the first appellant's counterclaim and ordering the second appellant to pay the costs of the respondents in the court below.

The first appellant's appeal

[2] The crips issue is whether the first respondent's email of 24 April 2019 constituted a repudiation of the sale agreement concluded between the parties and if so, the monetary consequences thereof.

[3] The first appellant regarded the email as a repudiation, which she accepted and cancelled the sale agreement. The respondents contend for the contrary and the Magistrate found for the respondents on this score.

[4] The facts in the matter are to a large extent common cause. On 12 June 2018, the respondents, acting jointly, purchased a property from the first appellant for the amount of R 1 950 000.00. The sale agreement was subject to two suspensive conditions. The first suspensive condition was that a property situated at 58 Derwent Avenue, Farrarmere, is sold within ninety days. The other suspensive condition was that the respondents obtain a bond for an amount of

R 1 950 000.00.

[5] The Derwent Avenue property was sold, and Absa Bank granted the appellants a bond in the amount of R 1 765 000.00, which was less than the amount applied for. However, in terms of the express terms of the agreement of sale, the first defendant was entitled to accept the grant for a lesser amount and regard the condition as being fulfilled. It is common cause that both suspensive conditions were fulfilled and that the sale agreement became unconditional.

[6] It is common cause that the second defendant proceeded with the preparation of documentation to obtain the transfer of the property into the names of the plaintiffs and that the Deeds Office ascertained that the first respondent was an unrehabilitated insolvent. Absa Bank withdrew the bond on this discovery.

[7] The respondents and the first appellant then, with the assistance of the transferring attorney, prepared a memorandum of agreement in order to create circumstances in terms whereof the first appellant accommodates the first and second respondents by providing them with an opportunity to apply for the rehabilitation of the first respondent or to apply for a bond in the name of the second respondent or to wait until the end of May 2019, by which date the first respondent would have become rehabilitated.

[8] It is common cause on the evidence that the first respondent did not apply for his rehabilitation and neither did the second respondent apply for a bond as is envisaged in the memorandum of the agreement.

[9] There is no debate that the first respondent on 24 April 2019 sent an email to the conveyancer which read as follows:

"There is no use in applying for the 1.95 mil bond, we want to sort out the problem beforehand. We suggest a reduction in the selling price to accommodate the issues at hand. From here we will apply for the bond, the seller needs to agree to this, it is not a small issue and needs to be taken seriously. The defect needs to be repaired or new selling price must be negotiated and then we will apply for the bond. If the seller is not prepared to look at this we need to look at other options therefore applying for a bond on this property will be costly and a waste of time if everything is not sorted out beforehand."

[10] The fist appellant viewed the email as a repudiation of the agreement which she accepted and cancelled the sale agreement.

[11] Repudiation of a contract occurs where a party to a contract without lawful grounds indicates to the other party whether by means or conduct a deliberate an unequivocal intention to no longer be bound by the contract. If the other party elects to accept the repudiation the contract comes to an end upon the communication of the acceptance of the repudiation to the party who has repudiated.[1]

[12] On a plain reading of the email, it is evident that the first respondent sought to renegotiate material terms of the sale agreement, including the purchase price of the property and his obligation to obtain bond finance for the purchase price. He also sought to raise additional defects beyond those already identified in the sale agreement. What was envisaged was the renegotiation of a new agreement that would be at odds with the terms of the extant sale agreement. An objective interpretation of the email marks it a clear intention not to be bound by the extant sale agreement, which renders it a repudiation. Emphasis on the second respondent's subjective intention to remain bound by the sale agreement is

[1] Nash v Golden Dumps (Pty) Ltd 1985 (3) SA 1 A at 22D-F; Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd ("Datacolor") at para 16.

misplaced, as the enquiry for repudiation is a matter of perception rather than intention.[2]

[13] The question is whether a reasonable person would conclude that proper performance, in accordance with the contract, will not be forthcoming. The email clearly indicated that the respondents no longer wish to proceed with the sale at the existing price, nor would they take reasonable steps to obtain the bond finance contemplated under the sale agreement. A generous interpretation might be that the respondents were still interested in buying, but only on new terms. But even on such a generous reading, the email amounts to a repudiation, as it clearly states that it cannot perform under the current agreement and proposes a wholly new deal.

[14] In the result, the court below erred in its assessment that the email did not constitute a repudiation of the sale agreement. The email constituted a repudiation of the sale agreement, and the first appellant was entitled and in fact accepted the repudiation. The sale agreement was consequently validly cancelled.

[15] Following the valid cancellation of the sale agreement, the first appellant was entitled to retain as *rouwkoop* the amount of R 78 702.00 paid by the respondents. The respondents were not entitled to a reimbursement of the amount. The reasoning of the court below cannot be upheld on this score. The terms of the sale agreement entitle the first appellant to retain the amount, and the court below erred in ordering repayment of the amount to the respondents.

---

[2] Datacolor above at para 17.

[16] The cancellation of the sale agreement gave rise to the respondents' obligation to pay the estate agent's commission in accordance with the terms of the sale agreement. The estate agent's claim for commission was ceded to the first appellant against payment of an amount of R 5 000.00 and she sought payment thereof from the respondents. There is no dispute regarding the validity of the cession itself. The fact that the estate agent "wrote off" the claim in its books of account does not affect the validity of the cession. In terms of the sale agreement, the respondents would be liable for the commission in the event of the sale being cancelled as a result of their actions or inactions. The cancellation of the sale agreement was because of the repudiation by the first respondent. Consequently, the respondents became liable to pay the estate agent and the first appellant is entitled to the amount due by virtue of the cession.

The second appellant's appeal

[17] The second defendant takes issue with the costs order granted against it in favour of the second respondent, because that order suggests that the stance adopted by the second appellant was not justified.

[18] The second appellant, as conveyancer, acted in the position of a stakeholder who held monies in trust to be paid out to the party entitled to such funds. In the event of a dispute, the dispute must be decided by the parties or a court before any payout can be made. As a stakeholder, the second appellant does not venture into the issues in dispute and is not mandated to resolve such a dispute.

[19] Once there was a dispute between the first appellant and the respondents as to who had repudiated the sale agreement and who was entitled to the funds held in trust, the second appellant was required to adopt the stance it adopted. It could

not pay the funds out to any party until the dispute was resolved.

[20] Faced with the litigation, which included a conditional counterclaim by the first appellant, the second appellant was entitled to participate in the litigation. There was therefore no factual or legal basis for the court below to order the second appellant as a stakeholder to pay the costs of the respondents. The judgment of the court below is silent on its reasoning for the costs order, which entitles this court to reconsider the exercise of the discretion *de novo*. Had the learned Magistrate exercised her discretion judiciously, based on the correct facts and principles, the Magistrate would have made no order as to costs in relation to the claims against the second appellant.

Order

[21] In the result, the following order is made:

1. The first appellant's appeal is upheld with costs and the order of the court below is set aside and replaced with the following:

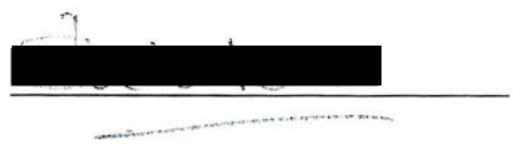
    1.1. The second respondent's claim for payment of the amount of R 78 702,00 is dismissed with costs;

    1.2. Judgment is granted in favour of the first appellant against the first and second respondents, jointly and severally, for the payment of the sum of R 146 250.00 together with interest on the sum of R 146 250.00 calculated at the rate of 7% per annum from 20 October 2021 to date of payment;

    1.3. Costs of suit.

2. The second appellant's appeal is upheld with costs, and the order of the court below is set aside and replaced with the following:

    2.1. Each party is to pay its own costs.



SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

For the first appellant:

Adv AP Bruwer instructed by Schalk Brits Attorneys

For the second appellant:

Adv M Sethaba instructed by Eversheds Sutherland (SA) Inc.

For the first and second respondents:

Adv M Joubert instructed by Rogers Kruger Attorneys

Heard on 1 June 2026

Judgment on 25 June 2026