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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 158187/2025

DATE: 2026-08-27

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES : NO

(3) REVISED

SIGNATURE

DATE: 27 August 2026

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In the matter between

SETSO PROPERTY FUND (PTY) LTD

Applicant

and

NQOBILE FABBIOH KUBEKA

Respondent

J U D G M E N T *EX TEMPORE*

WILSON, J: The respondent, Ms Kubeka, purchased a unit in the “2[...] F[...]” Sectional Title Scheme. It appears from the papers that she did so as an investment for her and her husband. On inspecting the unit, Ms Kubeka noticed certain defects which she required be remedied. These defects were in the main associated with attributes of the property that would make it fit to rent out as a fully furnished and

serviced short-term rental.

They were, for example, a chip in the wall near the entrance, a faulty door handle, a damaged showerhead, scratches on the glass, paint marks present on a bedroom window, and so on.

The seller of the property represented by an agent who is referred to on the papers as “Cameron” attended to remedying the defects complained of. Thereafter on 26 May 2025, Ms Kubeka’s husband, Mr Kubeka, inspected the
10 property. In a WhatsApp sent to Cameron at 8pm 26 May 2025, Mr Kubeka said:

“Looks good Cam, happy letter coming tomorrow.”

On 27 May 2025, Ms Kubeka signed a letter addressed to Standard Bank which was financing Ms Kubeka’s purchase of the property. In that letter Ms Kubeka confirms that:

*“The improvements on the above property have been completed in terms of the building agreement.
20 Standard Bank can proceed to make the final payment.”*

The reference to the building agreement on the letter can only be a reference in fact to the sale agreement that Ms Kubeka signed. On the 21 July 2025, Ms Kubeka wrote to the seller complaining of certain further snags or defects

in the state of the property. Some of those defects are expressed in rather vague terms – for example that the property is not in “the promised new or hotel ready condition”. And some are transparently minor. For example a cracked floor tile was discovered in the property after Ms Kubeka had signed the letter directing her bank to release the finance necessary to purchase the property.

There were other snags, but I need not deal with them in any detail. On the basis of those defects
10 communicated to the seller later on in July and in August 2025, Ms Kubeka purported to cancel the sale agreement.

The applicant, Setso, did not accept the cancellation and now applies to me to enforce the sale agreement. It is common ground between the parties that if the defects listed in 21 July 2025 email and the emails that followed it were material in the sense that they went to the root of the sale agreement, then Ms Kubeka had the right to cancel and the application must be dismissed. Conversely, if those defects were not material, they did not go to the root
20 of the contract, and the application must be granted.

It seems to me that the defects complained of on 21 July 2025 and thereafter were no more than minor snags. On their face they plainly did not go to the root of the contract. Counsel for Ms Kubeka asked me in her submissions to try and see things from Ms Kubeka’s

perspective. Subjectively, it was argued, those defects were important to Ms Kubeka.

That is of course not the test. The test is whether the defects were objectively so important as to go to the root of the agreement. But even if that were not the test, the evidence is in fact that Ms Kubeka herself did not regard the defects as particularly important.

If she did, she would not have signed what her husband refers to as a happy letter on 27 May 2025,
10 authorising Standard Bank to release the finance necessary to purchase the property. No reasonable person who genuinely believed that a property they were about to purchase was seriously defective would authorise a financing bank to make a payment necessary to complete the sale agreement. The fact that Ms Kubeka did so clearly indicates not only that the defects she now relies on are not material, but that she did not think at the time she signed the letter that there were any material defects at the property.

20 It was suggested in argument – and there is an echo of this on the papers – that Ms Kubeka was induced to sign 27 May 2025 happy letter by the seller’s misrepresentation that the defects had been cured. However, the facts do not bear this out. It is plain on a conspectus of all the facts that Ms Kubeka did not rely on the seller’s representation

that the defects had been remedied. She in fact relied on an inspection conducted by Mr Kubeka, the evening before she signed the happy letter. In those circumstances, even if there was a misrepresentation it was neither material to Ms Kubeka's decision to sign the happy letter, nor a representation actually made by the seller.

There is no other defence raised in the answering affidavit to the claim to enforce the sale agreement. I should note that the applicant takes issue with the lateness
10 of the answering affidavit, the fact that it is not properly commissioned, and the fact that it is not accompanied by an application for condonation.

In view of the conclusions to which I have come, it was plainly in the interests of justice that I treat the answering affidavit as having been properly deposed to and filed, and that I had full regard to its contents. I have had such regard, but the application must nevertheless in my view succeed.

For all of those reasons there will be an order in
20 terms of the draft handed up by the applicant's counsel which I have signed, dated and marked X.

WILSON, J
JUDGE OF THE HIGH COURT
27 August 2026

