

REPUBLIC OF SOUTH AFRICA



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

Case Number: 5068/2021

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

DATE

SIGNATURE

In the matter between:

VAN DEVENTER AND VAN DEVENTER INCORPORATED

APPLICANT

AND

VAN NIEKERK: JOHANNA CATHARINA

FIRST RESPONDENT

ELS: MANDY MARGOUX

SECOND RESPONDENT

JUDGMENT

MUDAU, J:

[1] This is an application in terms of section 21(1)(c) of the Superior Courts Act 10 of 2013 ("the Act"), whereby the applicant (conveyancing attorneys) seek a declaration of rights in the following terms:

- “1.1. That the agreement concluded was validly and lawfully cancelled as a result of the respondents’ breach in terms of clause 13 read with clauses 13.1 and 13.1.1;
- 1.2. That clause 7.1 and clause 13.1 of the agreement are valid and enforceable between the Applicant and the Respondents;
- 1.3. That in terms of clause 7.1 of the agreement, the Respondents are duly liable, jointly and severally, for all expenses incidental to the registration of the property; and
- 1.4. That in terms of clause 13.1 of the agreement, the Applicant is lawfully entitled to retain the wasted costs incurred in the rendering of conveyancing services to the Respondents.”

[2] The background facts are largely common cause. On 24 May 2021 and at Vereeniging, the respondents, duly representing themselves, made a written offer to purchase (“the agreement”), in respect of a property known as 2 Hamerkop Street, Three Rivers East, which offer was duly accepted and attested to by the seller, a certain Mr Viljoen. The basis of this application has its origin in the agreement referred to above between Mr Viljoen and the respondents as joint purchasers. Viljoen, on the applicant’s version, cancelled the agreement which the respondents dispute. Mr Viljoen has not been cited in this application.

[3] In seeking relief from the agreement, the applicant contends that the agreement was validly and lawfully cancelled. The applicant relies on Clause 7 of the agreement, which specifically deals with the transfer costs relating to the immovable property, and Clause 7.1. provides as follows:

“All costs of Transfer, including but limited to, Transfer Duty and the costs of registering any mortgage bonds which may be required, as well as survey and

diagram fees if applicable, and any VAT payable on such costs, shall be paid by the Purchaser”.

- [4] The respondents in their opposing affidavit raised three points *in limine* being *locus standi*, jurisdiction and non-compliance with Uniform Rule 18(1). The last point in limine was abandoned and accordingly requires no determination. Only the first two points in limine were persisted with.
- [5] First, the respondents contend that the applicant was not a party to the offer to purchase agreement concluded between Viljoen ("the Seller"), and the respondents. The respondents contend that the applicant does not have the required *locus standi* to launch this application.
- [6] The respondents raised a second point *in limine* pertaining to the jurisdiction of this Court. In doing so, they rely on the fact that they stipulated their *domicilium citandi et executandi* as 19 Gamtoos Street, Secunda. The respondents elaborate on this point by stating that the applicant was not a party to the agreement and in terms of the *maxim actor sequitur forum rei*, the application ought to be launched in the Mpumalanga High Court, Nelspruit.
- [7] The respondents argued that as per the agreement relied upon, the applicant lacked *locus standi* to institute these legal proceedings, as Mr Viljoen was not named as parties to these proceedings.
- [8] In argument regarding the first point *in limine (locus standi)*, the applicant sought a postponement of these proceedings from the bar which was strenuously opposed by the respondents. In essence however, an applicant for a postponement seeks an indulgence.¹ The court has a discretion as to whether an application for a postponement should be granted or refused. In

¹ *National Police Service Union and Others v Minister of Safety and Security and Others* 2000 (4) SA 1110 (CC).

consequence, the court has a discretion, which must be exercised in a judicial manner, to refuse a postponement even when wasted costs are tendered or even when the parties have agreed to postpone the matter.

[9] An application for a postponement must be made timeously, as soon as the circumstances which might justify such an application become known to the applicant, which the applicant in this instance failed to do. The application for a postponement was not only without proper foundation, but was highly prejudicial to the respondents' case, and fell to be dismissed. It was quite obvious to me from the submissions by counsel on behalf of the applicant that the application for a postponement was sparked by the first point *in limine* to which I return.

[10] It is trite that there is no rule of law that allows a court to confer *locus standi* upon a party who otherwise has none, on the ground of expediency or to obviate impractical and undesirable procedures.² It is equally trite that, an agent generically has no *locus standi* to sue or be sued on the principal obligation between the principal and the other party.³ It is also trite that where an applicant sues in his capacity as an agent without his principal being a party to the litigation, it is essential that he establishes his *locus standi* in his founding affidavit.

[11] It has by now become settled law that the joinder of a party is only required as a matter of necessity as opposed to a matter of convenience if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned.⁴

² See *Gross and Others v Penz* 1996 (4) SA 617 (A) at 632.

³ *Springfield Omnibus Service Durban CC v Peter Maskell Auction CC and Another* 2006 (4) All SA 483 (N).

⁴ See for e.g. *Bowring NO v Vrededorp Properties CC and Another* 2007 (5) SA 391 (SCA) para 21; *Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA).

[12] The seller, Viljoen has a “direct and substantial interest” in the subject matter of the litigation, which may be affected prejudicially by the judgment of this court such that his non-citation would amount to non-joinder. As a conveyancer, without more, the applicant obviously has no *locus standi* to sue or be sued on the principal obligation between the principal and any other party unless expressly mandated to do so. The mere fact that the applicant has an interest in any contingent litigation between the actual parties does not entitle it to standing in these proceedings. In the result, I uphold the first point taken *in limine* on behalf of the respondents. It is unnecessary to rule on the second point in limine.

Order

[13] The point in limine (*locus standi*) is upheld with costs.

13.1 Argument on the merits of the application is postponed *sine die*.

MUDAU J
[Judge of the High Court]

APPEARANCES

For the applicant: Adv. R De Leew

Instructed by: Van Deventer and Van Deventer Incorporated

For the Respondent: Adv W Coetzee

Instructed by: Mcloughlin Porter Inc.

Date of Hearing: 4 October 2022
Date of Judgment: 10 October 2022