IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED:

Date: ***15th March 2019*** Signature: ______

CASE NO: 2018/46462

DATE: 15TH MARCH 2019

In the matter between:

RAMPHELE, LILLIAN MABOLELE MATHAGA	Applicant

and

FRONTLINE AFRICA INVESTMENTS (PTY) LIMITED	First Respondent
PRICE WATERHOUSE COOPERS INCORPORATED	Second Respondent
VENTER, D D	Third Respondent
COETZEE, GERT HENDRIK JACOBUS, N O	Fourth Respondent
BOTHA, J H, N O	Fifth Respondent
THE MASTER OF THE HIGH COURT, PRETORIA	Sixth Respondent

JUDGMENT

ADAMS J:

[1]. This is an opposed application by the applicant for an order which would have the effect of compelling the first respondent to transfer into her name forty shares in the first respondent presently held in the name of her deceased husband.

[2]. The application is opposed only by the first respondent. The other respondents have been cited in their official capacities because they have an interest in the relief sought. Of importance is the fact that the fourth respondent is the executor in the deceased estate of the applicant's late husband, Preddy Ramphele, and the fifth respondent administered the estate on behalf of the fourth respondent. The second and the third respondents are the auditors of the first respondent.

[3]. The applicant is the sole heir in the estate of her late husband, and by all accounts she, in the normal course of events, would have been entitled to take transfer of the forty shares held by her husband in the first respondent at the date of his death on the 27th of March 2000. This is confirmed by the Supplementary First and Final Liquidation and Distribution Account, which laid for inspection, without any objection, during May 2016.

[4]. The first respondent opposed the application on the basis that at a meeting on the 2nd December 2014 between the applicant, the fifth respondent and the first respondent's attorneys, the applicant had agreed to sell the forty shares in the first respondent to the first respondent. This is denied by the applicant. Also, so the first respondent contends, the applicant is not entitled to take transfer of the shares in view of the first respondent's Memorandum of Incorporation, which provides as follows at clause 5:

'(5) If a member of the company desires to sell or alienate his shares in the company, the following will be applicable:

(a). Before a transferring shareholder makes or accepts an offer to a third party, he is compelled to offer such a proposal in writing to the other shareholders – pro rata to their shareholding in the company clearly stating the number of shares which are on offer, the price and the condition of sale.

(b). The other shareholders will then be permitted to, by means of a written notice within 30 days of date of receipt of the offer, to take up these pro rate shares at the price and conditions as stated'.

[5]. The fourth and fifth respondents, so the first respondent contends, did not comply with these provisions of the Memorandum of Incorporation and until they do, the fourth and fifth respondents are not entitled to transfer the shares to the applicant. This contention by the first respondent is not sustainable and can and should be rejected summarily. The provisions do not find application in this matter. The applicant is not a third party who is purchasing the shares from a shareholder. She is a shareholder by virtue of the fact that she is a successor in title to an existing shareholder by operation of the laws of succession. I therefore reject this contention on behalf of the first respondent.

[6]. The main dispute between the parties relates to the conclusion or not of an agreement by the estate of the applicant's late husband and / or the applicant herself to sell the shares to the first respondent and / or its other members. Therefore, the question which is central to this opposed application is whether, if regard is had to the common cause facts in the matter, the surrounding circumstances and the communications between the parties, a contract came into existence between parties in terms of which contract the deceased estate or the applicant herself had sold or agree to sell to the first respondent the forty shares in the latter company.

[7]. I am of the view that for the answer to this central question one needs look no further than the version on paper of the first respondent, which, in its answering affidavit, although it claims that an agreement for the sale of the shares was concluded at the meeting on the 2nd of December 2014, states that a letter was addressed to the executor on the 9th of March 2015 confirming that the applicant confirmed at the said meeting that she 'would like to sell her shareholding in Frontline as opposed to remaining as a shareholder'. An offer was then made by the first respondent to buy the shares for the purchase price of R11 460. The point is this: if an agreement was concluded for the sale of the shares during December 2014, why then is it necessary for the first respondent to make an offer to buy during March 2015. It is also instructive to note that in correspondence from the attorneys for the first respondent shortly after the 2nd of December 2014, no mention is made of any agreement having been reached at the meeting on the said date.

[8]. Even more telling is the fact that on the 10th of April 2015 the first respondent's attorneys wrote to the executors advising them as follows: 'Kindly note that we are still awaiting your written confirmation on whether your client accepts or client's offer of R11 400 in respect of the 40 shares'.

[9]. Wessels JA in *South African Railways & Harbours v National Bank of South Africa Ltd*, 1924 AD 704 at 715 – 16 said this:

> 'Although the minds of the parties come together, courts of law can only judge from external facts whether this has or has not occurred. In practice, therefore, it is the manifestation of their wills and not the unexpressed will which is of importance...
>
> .... the law does not concern itself with the working of the minds of the parties to a contract but with the external manifestations of their minds ..... if by their acts their minds seem to have met, the law will, where fraud is not alleged, look to their acts and assume their minds did meet and that they contracted in

accordance with what the parties purport to accept as a record of their agreement.'

[10]. This pronouncement by the AD is a helpful guide in resolving conflicts of evidence on the existence or the terms of a contract. As was stated by the author of Christies: The Law of Contract in South Africa, 6th Ed, by RH Christie:

> '... in order to decide whether a contract exists one looks first for the true agreement of two or more parties and because such agreement can only be revealed by external manifestations one's approach must of necessity be generally objective'.

[11]. I find myself in agreement with this enunciation of the applicable legal principles. The point is this: notwithstanding the assertion to the contrary on behalf of the first respondent, the objective facts seem to support the claim by the applicant that no agreement for the purchase and sale of the shares was concluded between the deceased estate and the applicant.

[12]. Applying these principles *in casu*, I therefore find myself in agreement with the submissions on behalf of the applicant that the balance of probabilities favours the case of the applicant. The applicable legal principles support the conclusion that no contract was concluded as averred by the first respondent.

[13]. The applicant is therefore entitled to the relief claimed in its notice of motion, and her application should be granted.

Costs

(5) The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

(6) I can think of no reason why I should deviate from this general rule.

(7) I therefore intend awarding cost against the first respondent in favour of the applicant.

Order

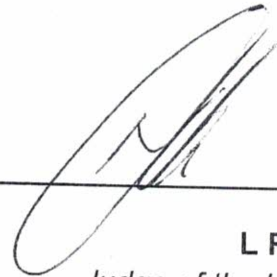
Accordingly, I make the following order:-

1. The first respondent shall transfer into the name of the applicant the forty shares in it presently held in the name of her late husband, Preddy Ramphele, and the first respondent shall do all things necessary and sign all documents necessary to ensure that the aforementioned shares are in fact transferred into the name of the applicant.

2. The first respondent or its duly authorised representative shall issue the share certificate relating to the forty aforementioned shares in favour of the applicant.

3. The first respondent or its duly authorised representative shall amend and ensure that its share register is amended to reflect that the applicant is the owner of the forty shares.

4. The first respondent shall pay the applicant's cost of this opposed application.



L R ADAMS
Judge of the High Court
Gauteng Division, Pretoria

HEARD ON:	12th March 2019
JUDGMENT DATE:	15th March 2019
FOR THE APPLICANT:	Adv J De Swardt
INSTRUCTED BY:	Kotze & Roux Attorneys
FOR THE FIRST RESPONDENT:	Adv N L Dyirakumunda
INSTRUCTED BY:	Ramushu Mashile Twala Inc