

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 29940/22

In the matter between:

THE PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA

FIRST APPLICANT

THE MINISTER OF THE DEPARTMENT
OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT

SECOND APPLICANT

THE MINISTER OF PUBLIC WORKS

THIRD APPLICANT

and

UNIQUON DEVELOPERS (PTY) LTD

FIRST RESPONDENT

THE EXECUTOR OF THE ESTATE
OF THE LATE W J LOUW

SECOND RESPONDENT

THE SHERIFF PRETORIA EAST

THIRD RESPONDENT

ORDER

The following order is granted:

1. The application is dismissed with costs.

REASONS

- [1] The applicant seeks an order staying the execution of an order granted on 16 September 2022 in the unopposed motion court, pending the determination of a rescission application filed and issued on 21 September 2022.
- [2] It is apparent from the papers filed of record that the order was granted in the unopposed motion court. The applicants' (then respondents) failed to file an answering affidavit timeously, but their counsel made submissions to the court seeking a postponement. The court refused to accept the answering affidavit, or postpone the matter, delivered an *ex tempore* judgment, and granted the order sought.
- [3] The applicants ostensibly rely on rule 42 in their rescission application. It cannot be said that the order granted on 16 September 2022 was granted erroneously in circumstances where the applicants' counsel argued for a postponement and the application was dismissed. In these circumstances, an application for rescission in terms of Rule 31 is, in my view, the correct approach to contest the order granted.
- [4] The factual context of this application, however, belies the claimed urgency and does not substantiate a finding that the applicants will suffer irreparable harm if the order is not granted. I am dealing with the merits of the application, for the facts of the matter refute the applicants' contention that they will suffer irreparable harm if the order granted on 16 September 2022 is not stayed.
- [5] The property in question is registered in the name of the late W. J. Louw. The title deed reflects that the property was purchased from the Republic of South Africa by the said Mr. Louw for an amount of R121 000.00. The title deed and a mortgage bond in favour of the seller in the amount of R108900,00 were registered in the Deed's Office in 1991.

- [6] Clause 6 of the bond determines that if any question arises regarding any amount that may be outstanding, the head of the Department of Local Government, Housing and Works (Hoof: Departement van Plaaslike Bestuur, Behuising en Werke) will finally determine the outstanding amount. The bond also contains the payment arrangements. The parties agreed that the debt would be repaid in 60 monthly instalments.
- [7] Neither party has, to date, been able to locate any records regarding the transaction other than the title deed and the bond. The Deputy Director: Acquisitions and Disposals from the Department of Infrastructure and Development, however, confirmed that the property is not listed on the 'immovable asset register'. He informs that the Department of Infrastructure and Development was only established in 2009. The respondents made numerous futile attempts to enquire which department would be seized with the matter.
- [8] The applicants maintain that they have not been able to determine which department must consent to the cancelation of the bond over the property. From the founding affidavit, it seems as if they now question the validity of the transaction, and require the respondents to prove that the bond was settled.
- [9] The order granted on 16 September 2022 provides for the payment of security equal to double the bond amount in the trust account of an attorney firm, and orders the applicants to sign the bond cancelation papers within 7 days of the order. If they fail to do so, the Sheriff is to sign on their behalf. The security is to remain in place until 15 November 2022 on which date the applicants are called upon to provide proof of any outstanding amount in terms of the bond, failing which the rule *nisi* shall lapse.
- [10] The applicants submit that the payment of security does not resolve the dispute 'as one cannot pay for something without knowing the value thereof.' The applicants also submit that they need time to investigate the circumstances surrounding the sale. They allege that:

‘as long as it cannot be proved that ownership of the property has indeed passed to the deceased, a fact which is still under investigation as already alluded to elsewhere above, the ownership has not passed to the Second Respondent and consequently the offer to purchase in the relation to the property is null and void.’

This submission does not account for the fact that registration of title occurred and that a mortgage bond was registered over the property containing the payment arrangements.

[11] It is trite, that the effect of the registration of the transfer of ownership is that it creates a real right and protects such real right by providing *prima facie* evidence of its existence.¹ The best evidence of ownership of immovable property is the title deed to it.² The applicants are thus wrong when they submit that the ownership of the property has not been proven since, despite having been aware since at least August 2021 of the request for the bond to be cancelled, they did not rebut the evidence.

[12] The discretion to suspend court orders provided in rule 45A of the Uniform Rules of Court was succinctly captured by Binns-Ward J in *Stoffberg N.O. and Another v Capital Harvest (Pty) Ltd*:³

‘The broad and unrestricting wording of rule 45A suggests that it was intended to be a restatement of the courts’ common law discretionary power. The particular power is an instance of the courts’ authority to regulate its own process. Being a judicial power, it falls to be exercised judicially. Its exercise will therefore be fact specific and the guiding principle will be that execution will be suspended where real and substantial justice requires that. ‘Real and substantial justice’ is a

¹ *Frye’s (Pty) Ltd v Ries* 1957 (3) SA 574 (A) at 584. See also Muller G *et al.*, *Silberberg and Schoeman’s The Law of Property*, 6th ed, LexisNexis at 323 fn 133, and the authorities referred to therein.

² Muller G *et al.*, *Silberberg and Schoeman’s The Law of Property*, 6th ed, LexisNexis at 270.

³ (2130/2021) [2021] ZAWCHC 37 (2 March 2021) at par [26].

concept that defies precise definition, rather like ‘good cause’ or ‘substantial reason’. It is for the court to decide on the facts of each given case whether considerations of real and substantial justice are sufficiently engaged to warrant suspending the execution of a judgment; and, if they are, on what terms any suspension it might be persuaded to allow should be granted.’

- [13] The fact that the bond provided for the repayment of the debt over 60 months, whilst the bond was not foreclosed, substantiates an inference that the debt was settled in full. The fact that the bond was not cancelled does not lead to the converse inference that the debt was not settled. In the circumstances where the applicants have not been able to determine whether they have any claim under the bond for the past 15 months, where the applicants do not indicate what steps they purport to take – or took- to remedy the *impasse*,⁴ where the property is registered in the name of the late Mr. Louw, and where s 31 of the Administration of Estate’s Act 66 of 1965 provides for the late lodgement of claims against deceased estates, the applicants failed to satisfy the court that irreparable harm will result if the execution of the order is not stayed.
- [14] The respondents submit that a costs order *de bonis propriis* must be awarded against the applicants. The applicants in turn sought the same order against the respondent. The urgent court is not a battleground for offended legal representatives. All parties’ legal representatives moved their respective clients’ cases. No reason exists for departing from the principle that costs follow success.

E van der Schyff
Judge of the High Court

For the applicants:

Adv. A Masombuka

⁴ The applicants merely state that an investigation is ongoing without providing sufficient detail about what has been done to date and what steps are planned for future investigations.

Instructed by:	The State Attorney, Pretoria
For the respondents:	Adv. L van Gass
Instructed by:	Van der Merwe Attorneys
Date heard:	18 October 2022
Date of order and reasons:	24 October 2022