



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 2023-005686

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

6/11/23

Date

Signature

In the matter between:

NTHUTHUKO SINETHEMBA MYEZA

APPLICANT

And

TRUTH NTANDO MTLOKWANA

RESPONDENT

JUDGEMENT

INTRODUCTION

1. The Applicant approached this Court with an application seeking the following relief:

‘ 1. The Respondent is directed to do all things necessary and to take all steps necessary to effect transfer and registration of the immovable properties situated at:

1.1. Vryheid Ext 15, Erf 263, portion 0, held under title deed number – T3746/2014;

1.2. Melmoth, Erf 440, portion 0, held under title deed number – T8027/2013;

1.3. Sectional Title Forest Weaver, scheme number 298, Eua number G24, held under title deed number – SK979/2009S;

1.4. Sectional Title Forest Weaver, scheme number 298, unit number 24, held under title deed number – ST69439/2009.

(“the properties”) to the Applicant or his nominee within two weeks of the date of the grant of this order.

2. In the event that either the Respondents fail, within fourteen days of the grant of the Order, to take the necessary steps and to comply with paragraph 1 above, the Sheriff of this Honourable Court shall be and is hereby authorised to do all things necessary and reasonably possible to give effect to the transfer and to sign all documents on the Respondent's behalf.

3. The Respondent is directed to do all things necessary and to take all steps necessary to effect transfer and registration of the immovable properties situated at Vryheid Ext 15, Erf 263, portion 0, held under title deed number – T3746/2014 to the purchaser within 7 days of the date of grant of this order.

4. All the proceeds from the sale of the immovable property in paragraph 3 above shall be forthwith paid to the Applicant upon registration of the Deed of Transfer to the purchaser.

5. In the event of opposition, the Respondent is directed to pay the costs of the application.

6. Further and/or alternative relief.’

2. The basis of the Applicant's application is that the Respondent is refusing to comply with the terms of the 'settlement agreement signed by both parties' after their divorce¹. The application is opposed by the Respondent on the following grounds²:

'The relief sought by the Applicant has become prescribed;

The application seeks to achieve or to vary the Divorce Court order of 29 May 2014 through the backdoor instead of launching a variation in terms of Rule 42 of the Uniform Rules;

The settlement agreement is objectionable from a legal and practical point of view in the sense that it does not accord with both principles governing the law as follows:

The agreement was not signed in front of witnesses of both parties;

At the time of signing the deed of settlement, the Respondent lacked the legal capacity to enter into the agreement having been lacking mental capacity;

The settlement is not consistent with the law in that the original dispute is settled by way of the Court Order dated 29 May 2014, therefore subsequent litigation will relate to non-compliance with the original underlying principle, not the settlement order and litigation in regard to enforcement is not the norm.'

BACKGROUND FACTS

¹ SEE: paragraphs 20.1; 21.2; 22.2-22.3 & 26.1 of the FA.

² SEE: paragraphs 5-10; 12-15 & 17-17.3 of the AF.

3. On 29 May 2014, the marriage relationship between the Applicant and the Respondent was dissolved by the Regional Division of Gauteng held at Pretoria. The divorce decree in respect of the division of their joint estate stated that each party was to retain the property already in his/her possession.
4. At the time of their divorce, the parties were and are still the co- owners of the immovable properties which the Applicant is now seeking an order that the Respondent be directed to transfer ownership to him.
5. It is apparent from the parties' papers that they concluded a settlement agreement in order to deal with their propriety rights in respect of these properties. The Applicant now seeks to enforce that settlement agreement.
6. Before I consider the parties' respective submissions in support of their case and/or defence, I deem it appropriate to first determine if there was a valid settlement agreement placed before me that spells out both parties' rights and obligations.

SETTLEMENT AGREEMENT

Was there a valid Settlement Agreement placed before Court

7. The Applicant has attached an incomplete Deed of Settlement (settlement agreement), marked as **Annexure I**, to his Founding Affidavit upon which he relies for his application. This settlement agreement does not have the date when it was signed and the place where it was entered into. Furthermore, it does not have the full signatures of the parties.
8. None of the parties have provided an explanation as to why an incomplete settlement agreement was filed and who initialed each and every page of that settlement agreement. I must also mention that the settlement agreement has initials that purport to be of three different people and a signature.

9. No facts were placed before me as to whether or not those initials constitute the parties' full signatures and, who else signed that settlement agreement. The signatures of both parties appended on their respective affidavits filed in this application, do not appear anywhere in the settlement agreement.
10. When I asked Counsel for the Applicants as to when this settlement agreement was signed, she said it was in **July 2015** without mentioning the specific date. I invited her to refer me to the settlement agreement where this date was mentioned, and she referred me to a letter dated **2 July 2015** attached to the Applicant's Founding Affidavit marked as **Annexure G**.
11. Counsel was, however, aware that **Annexure G** did not mention the date I was looking for. This Annexure was a letter addressed to the Applicant from his previous attorneys specifically informing him that the settlement agreement was furnished to him and the Respondent.
12. The other problem is that the co-owned immovable properties mentioned on page 8 of the settlement agreement are described as follows:
- " The first property" the shall mean Unit 24 in the scheme SS Forest Weaver, Willow Park Manor, Ext 56, Registration Division JR, Province of Gauteng held by the Title Deed No ST69439/2009 as well as exclusive use area G24 held by Notarial Deed with number SK4979/2009S.*
- "The second property" shall mean Erf 9720, Pietermaritzburg, registration division FT, Province of KwaZulu-Natal and held by Title Deed No T20685/2006.*
- "The third property" shall mean Erf 2356, Vryheid Extension 15, registration division HT, Province of KwaZulu-Natal, held by Title Deed No T3746/2014.*

“The fourth property” shall mean Erf 440, Melmoth, registration division GU, Province of KwaZulu-Natal, held by Title Deed No T8027/2013.’

13. The description of these properties as mentioned in the settlement agreement is materially different from the description of the immovable properties mentioned in the Notice of Motion and the Applicant's founding affidavit. For instance, the second property mentioned in the settlement agreement is not mentioned in the Notice of Motion and the Applicant's founding affidavit. None of the parties have placed facts before Court explaining these discrepancies.
14. Consequently, I come to the conclusion that no valid settlement agreement was placed before Court by the Applicant which sets out the parties' respective rights and obligations that warrant the granting of the relief sought by the Applicant.

What if the Settlement Agreement was valid

15. The Respondent has raised a special point of law contending that the relief sought by the Applicant has prescribed in that the settlement agreement was concluded on 13 July 2015, and the Respondent's obligation to transfer these immovable properties to the Applicant prescribed in terms of Section 11 of the Prescription Act, Act 68 of 1969(' Prescription Act').
16. The Applicant did not seriously challenge these allegations by providing the specific date of the conclusion of the settlement agreement. What the Applicant states in response thereto is that section 11 of the Prescription Act relates to the period of prescription of debts and that the Applicant's claim is not based on an alleged debt. Thus, the Prescription Act has no relevance to the claim. I do not agree for the reasons that are to follow.

17. In the **Road Accident Fund v Mdeyibe**³, the Constitutional Court held:

³ 2011 (2) SA 26 (CC) at para 11.

'Generally under the Prescription Act, prescription applies to a debt. For the purposes of this Act, the term debt has been given a broad meaning to refer to an obligation to do something, be it payment or delivery of goods or to abstain from doing something.

18. In terms of section 11(d) prescription of any other debt not mentioned in sections 11(a) to (c), the prescription period is 3 years. Taking into account the submission made by Counsel for the Applicant that the settlement agreement was concluded somewhere in **July 2015**, the 3-year period for prescription to take place is **July 2018**. Accordingly, the Applicant's claim has been prescribed.

COSTS

19. The Respondent has asked for a punitive costs order on the ground that the Applicant was warned in 2021, apparently not to proceed with this litigation. This raises questions of whether such a punitive costs order is warranted or not.

20. It is settled that costs on an attorney and client scale are to be awarded where there is fraud, dishonesty, vexatious conduct, and conduct that amounts to an abuse of the court process.⁴

21. I must state that in this application I never came across such a warning and, Counsel for the Respondent did not refer me to such a warning in the Respondent's papers. In any event, there is nothing fraudulent dishonest; vexatious, or an abuse of the court process by the Applicant in bringing this application. The Applicant brought this application on the wrong legal understanding of what constitutes a debt as defined in Section 11 of the Prescription Act.

22. Based on these facts I am of the view that a punitive costs order is not warranted in this matter.

⁴ Public Protector v South African Reserve Bank 2019 (6) SA 253 (CC) at para 8

On the premises, I make the following Order:

1. The application is dismissed,
2. The Applicant is to pay the costs of this application on party and party scale including the costs of Counsel employed in the matter.

A handwritten signature in black ink, appearing to read 'Mokoena', is written over a horizontal line. The signature is stylized with large, sweeping loops.

JUDGE MB MOKOENA AJ
JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA