Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 50451/21

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

....
DATE SIGNATURE

In the matter between:

NDIVHUWO ROSE MATSHAYA Applicant
ID NO: […]

and

SEBOYA WILLIAM MAPATHA First Respondent
ID NO: […]

NTHABISENG MARIA MASITA Second Respondent
ID NO: […]

THE UNKNOWN UNLAWFUL OCCUPIERS Third Respondent

OF ERF 1768 LOTUS GARDENS, EXTENSION 2, TOWNSHIP, REGISTRATION DIVISION J.R., GAUTENG PROVINCE

CITY OF TSHWANE METROPOLITAN MUNICIPALITY Fourth Respondent

JUDGMENT

DE BEER AJ

Introduction

1. This is an application in terms of which the applicant seeks the eviction of the first to third respondents in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("*the PIE Act*").

2. The matter was previously enrolled for hearing on 23 January 2023 before the Honourable Justice Wesley, whereafter judgment was delivered on 1 February 2023. In paragraph 12 of the judgment[1], it was ordered that the issue as to whether the first and second respondents are married to each other in community of property, as alleged in the answering affidavit deposed to by the second respondent, must be heard by way of oral evidence in terms of Uniform Rule 6(5)(g). The aspect that had to be referred and adjudicated by way of oral evidence was enrolled for hearing for the week of 24 April 2023 in subsequence of the order referred to above, which included that the costs of the hearing of 23 January 2023 was "*reserved for determination by the Court that hears the postponed application upon the issuing of a final order*."

3. In accordance with the practice directives, the matter was enrolled for

[1] CaseLines page 045 – 7

hearing on 26 April 2023. As recorded in the judgment referred to and the joint practice note, counsel appearing herein also appeared on the previous occasion, on 23 January 2023. On the morning of the hearing, counsel appearing on behalf of the respective parties indicated that an agreement was concluded between the parties regarding the previous contentious issue that was referred to oral evidence. The parties hereto consequently accepted that the first and second respondents are married in community of property, for the purpose of the hearing and adjudication of the current eviction application.

4. A document was handed up which on the face of it is dated 29 November 2008 (however, not translated into English) which, according to the second respondent's counsel, confirms one of the elements of a customary marriage, that of the negotiation and payment of lobola. The papers filed of record are, however, silent on the remainder of the requirements to prove the existence of a customary marriage between spouses.

5. In a divorce action[2] the marriage, customary marriage, or civil union must be proved to the satisfaction of the court even if the marriage or civil union is admitted on the pleadings[3]. Failure to do so will result in the divorce action being denied[4], such proof is normally adduced by the production of an authenticated copy of the marriage certificate or the certificate of registration of the customary marriage or civil union[5]. A copy of the handwritten document handed up did not purport to be such a certificate.

6. Although not so pleaded on the papers in front of court, counsel on behalf of the second application argued that the document handed up supported or referred to the existence of a customary marriage. This is, however, not a marriage certificate with reference and/or in accordance with the recognition of the Customary Marriages Act, and/or section 13 of the Identification Act, 68 of 1971 which constitutes the best evidence of the conclusion of a civil

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2 Section 1 of the Divorce Act

3 Baadjies v Matubela 2002 (3) SA 427 (W)

4 CF W 1976 (2) SA 308 (W)

5 Visser and Potgieter Introduction to Family Law 62 and Cronje and Heaton South African Family Law 39; Recognition of Customary Marriages Act, section 4(8); in respect of Civil Unions, see Civil Unions Act, section 12(4)

marriage issued by the relevant authorities.

7. Notwithstanding the above, the current eviction proceedings do not constitute a divorce action and although a customary marriage has not been proved (at least on the papers) in accordance with the relevant authorities, *inter alia*, referred to above, the court accepts for purposes of this hearing (i.e., the eviction application) that the first and second respondents are married in community of property in order to circumvent an existing impediment, wherefore it is unnecessary to receive evidence by way of oral hearing in terms of Rule 6(5)(g).

8. Although such a concession has been made for purposes of the hearing of this eviction application, it should unequivocally be stated that a divorce court is not bound by the agreement recorded above and what is found herein does not constitute any proof of a customary marriage which must be proved in a future divorce action, if any.

The eviction application

9. Having accepted for the purpose of this application that the first and second respondents are married in community of property, it deems to be mentioned that the first respondent plays no part in this application and has not opposed the relief sought. According to the answering affidavit, the first respondent has absconded the subject property situated at Erf 1768 Lotus Gardens, Ext 2, Township Registration Division JR, Gauteng.

10. The following seems to be common cause on the papers. That the applicant seeks the eviction of the first to third respondents from the property referred to above. The eviction is based upon the applicant's ownership that she acquired subsequent to the transfer and registration of the property into her name as recorded in the Deed of Transfer[6] on 9 April 2021. The registration and transfer were effected in consequence of a sale agreement recorded as an "*OFFER TO PURCHASE*"[7] concluded between the applicant (as

[6] CaseLines pages 015 -39 to 015 - 42
[7] CaseLines pages 015 – 34 to 015 – 38

purchaser) and the first respondent (as seller). The interpretation of the terms of the contract is not an issue in dispute, perhaps except for the reference to the recordal that the seller (first respondent) is "*UNMARRIED*" and the recordal in clause 8 that stipulates that ownership of the property will pass to the applicant (purchaser) on date of registration. Compliance with the obligation in terms of the sale agreement by the applicant is also not in dispute. There has also been compliance with sections 4(1) and 4(2) of the PIE Act by virtue of the court order granted by the Honourable Justice Janse van Nieuwenhuizen on 15 March 2022[8].

11. The following issues are in dispute and necessitate consideration by the court. Firstly, whether the sale agreement between the applicant and the first respondent is valid as the second respondent did not give consent for the sale to be concluded. In this regard, the second respondent merely seeks that the eviction application be dismissed. Although mention is made on two occasions in the answering affidavit that relief will be sought to declare the sale and transfer *void ab initio*, no such relief is sought in a counter application or otherwise. Be that as it may, the second respondent contends that the agreement falls foul of the statutory prescripts of the Matrimonial Property Act, 84 of 1988 as well as the Alienation of Land Act, 68 of 1981. In accordance with section 15(2) of the Matrimonial Property Act, ("*MPA*"), more in particular section 15(2) thereof, consent is required from the second respondent pertaining to the sale agreement which the first respondent concluded with the applicant, as the second respondent is (for purposes of this application subsequent to the agreement that the first and second respondents are married to one another in community of property), the co-joint owner of the subject property relevant to this application.

12. The applicant seeks the eviction of the first to third respondents based thereon that she is the owner of the property. It is common cause that the applicant and the second respondent have not concluded a lease agreement in respect of the subject property. The second respondent contends that this (a lease agreement) is unnecessary and that she is not an illegal occupier as

[8] CaseLines pages 023 – 1 to 023 - 3

she is a co-joint owner of the property by virtue of being married in community of property to the first respondent in whose name the property was registered prior to transfer thereof[9]. It is also common cause that the property, prior to registration and transfer thereof into the name of the applicant, was registered only in the name of the first respondent, and not the second respondent, although the second respondent remains the co-joint owner of the property by virtue of their marriage regime (accepted for purposes of this application).

13. The MPA clearly states that where parties are married in community of property, where one spouse wishes to alienate "*any immovable property forming part of the joint estate*" he or she must obtain "*written consent of the other spouse*". The second respondent contends that she never provided such written consent to the first respondent to conclude the sale agreement and sell the property to the applicant, wherefore the sale is *void ab initio*.

14. Conversely, the applicant relies on section 15(9) of the MPA and contends that she could not have reasonably known that the sale agreement was entered into contrary to the provision of section 15(2) of the MPA requiring written notice of the other spouse, i.e., the second respondent *in casu*.

15. The relevant sections upon which reliance is therefore placed by the parties are sections 15(2) and 15(9) of the MPA, which reads as follows:

> *"(1) Subject to the provisions of subsections (2), (3) and (7),* a spouse in a *marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.*
>
> *(2) Such a spouse shall not without the written consent of the other spouse –*
>
> *(a) alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming*

[9] See Windeed search – CaseLines page 015 - 33

part of the joint estate;

(b) enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;

(3) A spouse shall not without the consent of the other spouse –

(a) alienate, pledge or otherwise burden any furniture or other effects of the common household forming part of the joint estate;

(b) . . .

(c) donate to another person any asset of the joint estate or alienate such an asset without value, excluding an asset of which the donation or alienation does not and probably will not unreasonably prejudice the interest of the other spouse in the joint estate, and which is not contrary to the provisions of subsection (2) or paragraph (a) of this subsection.

…

(9) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2) or (3) of this section, or an order under section 16(2), and –

(a) that person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions or that order, it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2) or (3), or while the power concerned of the spouse has not been

suspended, as the case may be;

(b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the said subsection (2) or (3), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate."

16. With reference to the sale agreement, it is common cause that the second respondent did not sign the written instrument which she contends is *void ab initio* for want of compliance with section 15(2) of the MPA. The sale agreement records that the first respondent is "***UNMARRIED***" in his capacity as "***SELLER***" which recordal is repeated on the first page of the Deed of Transfer.

17. It is therefore contended by the second respondent that the sale agreement is invalid and that her written consent was never sought by the first respondent when he concluded the sale agreement with the applicant, and that she never had any knowledge of the transaction. The applicant contends that she is a *bona fide* third party that concluded the sale agreement and as a consequence became the owner of the property.

18. This court must therefore consider whether the provisions of section 15(2) of the MPA is applicable to the facts *in casu*, as opposed to section 15(9) thereof. Put differently, the second respondent relies on the provision of section 15(2) of the MPA, the applicant relies on the provision of section 15(9) of the MPA in support of the respective defence and claim in this application. The applicant seeks the eviction based on her entitlement of ownership confirmed by the deed of transfer, conversely, the second respondent contends that both the sale agreement and Deed of Transfer is void and invalid due to the fact that she did not provide written consent in respect of the sale agreement.

19. This court considered the authorities referred to in the heads of argument filed on behalf of both parties, which comprehensively dealt with the legal principles involved. During argument both parties referred to the matter of Vukeya v Ntshane and Others[10], reference was, *inter alia*, made to paragraphs 13, 17 and 20 of the Vukeya decision, which reads as follows:

> *"[13] It is not in dispute that the appellant was staying alone and presented himself as unmarried when he and the appellant concluded the sale agreement. This is different from the facts in Visser v Hull, one of the cases relied upon by the first respondent, where the third party was well-known to the contracting spouse, was a relative of his and knew from visiting his home that he lived with and had children by a woman with whom he lived as man and wife. In addition, in this case, there are two official documents that supported the appellant's version that he was unaware that the deceased was married to the first respondent. First, the deed of transfer dated 19 May 2009 referred to the appellant as unmarried. Second, the power of attorney to pass transfer with the deceased's signature appended to it described the deceased as unmarried. This all lends credence to what the appellant stated from the outset, namely that he was not aware that the deceased was married and could not reasonably have known that he was. In these circumstances, he could not reasonably have been expected to make further enquiries as suggested by the first respondent.*
>
> *[17] The only difference between the facts in Mulaudzi and this case is that, in Mulaudzi, one of the representations that the seller was unmarried was made under oath. That, in my view, is not a material distinguishing factor: in this case, the representation that the deceased was unmarried was made in formal legal documents, one of which was signed by the deceased. The appellant was entitled to rely on those representations and*

[10] (Case number 518/2019) [2020] ZASCA 167 (11 December 2020)

nothing would have given him pause for thought, and required him to enquire further. In any event, counsel for the first respondent was hard-pressed to suggest any feasible and reasonably practical enquiries that could be made in ascertaining the deceased's marital status.

[20] The high court erred by not considering s 15(9)(a) in its enquiry. Despite the fact that the appellant did not refer expressly to s 15(9)(a) in his answering affidavit, as counsel for the first respondent contended, as a trier of facts, the high court was bound to consider s 15 in its entirety and not cherry pick certain sections. The interpretation of any document including legislation must be approached, as this Court has indicated in numerous judgments, contextually and holistically, taking into account the purpose of the legislation under discussion. In this case, the purpose of the provision was to strike a balance between the interests of a non-consenting spouse, on the one hand, and a third-party purchaser, on the other. As aptly noted in Marais, '[w]hile the consent requirement is designed to provide protection to the non-contracting spouse against maladministration of the joint estate by the contracting spouse, the "deemed consent" provision in s 15(9)(a) is intended to protect the interests of a bona fide third party who contracts with that spouse."

20. Applicant's counsel submitted that the Vukeya matter supports the facts *in casu* and that section 15(9)(a) should be applied in respect of "*deemed consent*".

21. Conversely, the second respondent's counsel relied on a matter considered as part of the Vukeya judgment with reference to Marais NO and Another v Maphosa and Others[11], specifically paragraph 32 thereof which reads as follows:

[11] Marais NO and Another v Maphosa and Others [2020] ZASCA 23; 2020 (5) SA 111 (SCA)

> *" [32] I endorse the views expressed in the cases to which I have referred, as well as the views of the academic writers upon which they are based: a duty is cast on a party seeking to rely on the deemed consent provision of s 15(9)(a) to make the enquiries that a reasonable person would make in the circumstances as to whether the other contracting party is married, if so, in terms of which marriage regime, whether the consent of the non-contracting spouse is required and, if so, whether it has been given. Anything less than this duty of enquiry, carried out to the standard of the reasonable person, would render s 15(9)(a) a dead letter. It would not protect innocent spouses from the maladministration of the joint estate and would undermine the Matrimonial Property Act's purpose of promoting equality in marriages in community of property.*"

22. The authoritative provision is that section 15 is intended to strike a balance between the interests of a non-consenting spouse, on the one hand, and a third-party purchaser, on the other. Both the Vukeya and Marais matters referred to *supra* confirmed that "*while the consent requirement is designed to provide protection to the non-contracting spouse against mal-administration of the joint estate by the contracting spouse, the 'deemed consent' provision in section 15(9)(a) is intended to protect the interests of a bona fide third party who contracts with that spouse.*"

23. Having regard to the foregoing, the facts of the matter relevant to consider in whose favour the so-called balancing act of interests should be decided, the following facts must be considered.

24. On the face of the sale agreement and the Title Deed, it is recorded that the first respondent is unmarried. How far does the duty of the applicant thereafter extend to ascertain whether the first and second respondents were married? At the time of the conclusion of the sale agreement during February 2021, the applicant could ascertain from the sale agreement that the first respondent was unmarried. If the applicant requested the Title Deed,

the Title Deed would have also indicated that only the first respondent is the registered owner of the property. If the applicant obtained a Windeed search, it would have recorded that the first respondent was the owner by virtue of the Title Deed Nr T102713/2005. The contracting parties did not know one another prior to the time or during the time leading up to the conclusion of the sale agreement. The applicant (third party) did not know the first respondent ("*contracting spouse*"). These facts seem to support the Vukeya judgment.

25. Having regard to the Vukeya matter, the applicant's duty would not reasonably extend past the recordal in the sale agreement, such a duty does not include an interrogation of the marital status of a party with whom she was contracting, i.e., the first respondent, she was entitled to rely on the "*deemed consent*" *in casu*. This position might have been different if the sale agreement did not record the marital status of the seller, i.e., the first respondent, who concluded the agreement and transacted in his personal capacity. However, this is not the case *in casu*, *ex facie* the sale agreement.

26. Be that as it may, very little is said (in the founding papers) on what transpired during the negotiations prior to the conclusion of the sale agreement during February 2021. However, from a reading of the founding affidavit, it appears that the applicant was unaware of the fact that the second respondent would rely on being married "*in community of property*" as indicated in the answering affidavit.

27. The answering affidavit (deposed to on 5 July 2022) did not indicate whether the parties were married by way of civil marriage, customary marriage or civil union. Also, from the papers, the first respondent contends that she was married on 2 different dates, to wit 29 November 2008 (see paragraph 3.2 of the answering affidavit) and thereafter 28 November 2008 (see paragraph 28.2 of the answering affidavit). Although such a disparity might be a mistake in the presentation of the second respondent's defence and preparation of the answering affidavit, this is not the only mistake, as confirmed by the second respondent's legal representative. On another

aspect, it was stated under oath that "*the error occurred due to a bona fide administrative error.*"[12]

28. The issue as to which regime the second respondent was married to the first respondent, (i.e., in terms of a customary marriage) was only cleared up on the morning of the hearing, on 26 April 2023. The proof required of such a marriage as detailed above (albeit for purposes of a divorce action) was never presented to court or attached to the answering affidavit. There are also various discrepancies pertaining to the locality of the intended future residence (i.e., "*housing*"), support, and/or maintenance of the second respondent as stated under oath in the two respective answering affidavits which serve as evidence in front of court. These discrepancies are clear from the papers, which will be dealt with hereunder. The court cannot ignore the so-called second answering affidavit as the facts stated therein are confirmed under oath, notwithstanding the second respondent's legal representative's request to disregard the second answering affidavit due to *bona fide* administrative error in their office. For whatever reason the second answering affidavit was prepared, the same has been confirmed under oath and the court must take the contents thereof into consideration as admissible evidence, regardless of the weight, probative value, or relevance thereof, if any.

29. What is also stated under oath is the fact that the second respondent will "*apply for an order declaring the sale agreement entered into between the applicant and the first respondent to be void, and for an order setting aside the agreement of sale and subsequent transfer of ownership.*" The second respondent was legally represented at all times. However, such an application has to date not been instituted, and/or counter relief has not been sought herein. Therefore, even if this eviction application is dismissed, the Deed of Transfer still exists as a legal instrument in the Deeds Office and the sale agreement will not have been declared void, which is a declarator that perhaps should have been applied for by virtue of the provisions of section 21(1)(c) of the Superior Courts Act, 10 of 2013.

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[12] CaseLines page 043 - 7

30. Also, the second respondent states that the first respondent has deserted the property (their home) and that she is currently responsible for the maintenance of the two minor children, a divorce action is therefore intended. However, it was confirmed during the hearing of this matter that such an action has not yet been instituted. In a divorce action one of the spouses has the right, *in casu* the second respondent to claim an adjustment upon the division of the joint estate should one of the spouses not obtain the required consent necessitated to alienate a property as is relevant *in casu*. In this regard, section 15(9)(b) of the MPA is applicable, the second respondent will have the right to an adjustment in her favour upon the division of the joint estate, alternatively, the second respondent will have grounds to claim for damages against the first respondent, as co-joint owner of the joint estate.

31. The second respondent will therefore not be without legal recourse and can invoke the aforesaid section of the Act should it be found that the applicant is entitled to claim an adjustment in terms of section 15(9)(b).

32. The applicant should be afforded the "*deemed consent*" protection envisaged by section 15(9)(a). With reference to the Vukeya judgment, this court cannot find that any enqueiry would have alerted her to any customary marriage, which for purposes of this application was established for the first time on 26 April 2023. This court cannot find that any type of enquiery would have alerted the applicant of a customary marriage between the first and second respondents during February 2021. This aspect is relevant to the adjudication of whether the second respondent is in lawful occupation or not, and whether the applicant's relief claimed should be granted.

33. A further consideration is perhaps whether the applicant will have any recourse should the sale agreement and Deed of Transfer be declared void. In that event, restitution will be applicable and both the first and second respondents may be held liable jointly and severally, as joint co-owners of the joint estate's assets. If the first (or second) respondent, therefore, fails to repay the purchase consideration in circumstances where restitution should follow, a claim, judgment, and execution against the joint estate may very

well be a consequence. In consequence, the second respondent may claim an adjustment against the first respondent in terms of section 15(9)(b), as is currently also the case should the sale agreement not be declared void. However, the applicant only has proper recourse in maintaining the status *quo* of her ownership which is confirmed by way of the Deed of Transfer.

34. The current *ex lege status quo* is therefore that the applicant obtained ownership of the property by virtue of the Deed of Transfer, no relief to set the same aside has been applied for, nor a declaration that a re-transfer should be effected in the Deeds Office, which would also necessitate the joinder of the Registrar of Deeds to seek such relief. The applicable authorities regarding ownership of immovable properties are trite as has been confirmed in the authorities dealt with in the applicant's heads of argument[13].

35. By virtue of the sale, transfer, and registration of the subject property, the second respondent cannot claim to be the current co-joint owner of the property post-transfer and registration. The second applicant, consequently, is therefore in unlawful occupation of the property. As a result, the applicant is entitled to the relief sought, i.e., the eviction of the first to third respondents.

Section 4(7)(8) and (9) of the PIE Act

36. Once it has been established that a party, i.e., the second respondent is in unlawful occupation, a further inquiry must be made as to whether it is just and equitable for such an occupier to be evicted, which onus is on the applicant *in casu*. In the founding affidavit, the applicant provided the information she had cognisance of[14] and further stated that she is not aware of whether the first to third respondents "*have alternative housing*". Hereafter she stated that she is prejudiced by the fact that she had to obtain alternative accommodation and that this has caused her to be separated from her minor daughter (see paragraph 26.4 of the founding affidavit).

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13 CaseLines pages 033 – 12 to 033 – 13

14 CaseLines pages 015 – 22 to 015 – 25

37. The second respondent responded thereto, which relevant circumstances and facts must be provided where they are not in the applicant's knowledge as per the authorities in Ndlovu v Nchobo, Bekker and Another v Jika[15] and Dwele v Phalatse and Others[16]. In this regard the second respondent states that she is unemployed and must maintain the two minor children, currently 16 and 13 old respectively. The second respondent states that as she has been deserted by the first respondent, she has no other financial resources to maintain the minor children and that the only asset at her disposal is the property. However, in the second answering affidavit referred to, reference is made to support that she is receiving ("*I am supported by …*"), albeit unknown what the extent thereof is. The second respondent also states that she "*cannot reside at the property*", perhaps with reference to the subject property.

38. The second respondent stipulated that "*Once I relocate at the beginning of June 2022, the children will be in a stable, secure and loving environment.*".

39. In the replying affidavit and in answer to whether the second respondent is in fact unemployed, documents have been attached suggesting that the second respondent is a member of certain entities, however, this does not prove any income.

40. What can be considered is that the second applicant indicated at paragraph 24.4 of the second answering affidavit that "*in order to illustrate my bona fides, I record that from 1 June 2022 I will be residing at 9 View Street, 611 Waterkloof Estate, Rietvlei Rand. If needs be, I will produce a copy of the rental agreement at the hearing of this application.*" This contradicts paragraph 26 (pages 303 – 17) wherein the second respondent stated that she will not be able to obtain alternative accommodation.

41. Over and above the aforesaid, the respondent does not deal with any other aspects applicable to sections 4(7) to (9) of the PIE Act, although the onus remains on the applicant in this regard. However, there is also a

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15 Ndlovu v Nchobo, Bekker and Another v Jika 2002 4 ALL SA 384 (SCA)

16 Dwele v Phalatse and Others (11112/15) [2017] ZAGPJHC 146 (7 June 2017)

responsibility on the second respondent to provide facts for the court to consider for purposes of this application as to what may be just and equitable.

42. In considering the facts at hand, this court finds in favour of the applicant and should order the relief sought in respect of evicting the first to third respondents. Having regard to the fact that the second respondent has resided at the property for a period of more than 6 months, this Court must determine the reasonable period to be provided for the purposes of relocating. In this regard, it is contended by the applicant that a period of 2 (two) months should be provided. This court is of the opinion that a longer period should be granted for the second respondent and the minor children to make suitable arrangements. In this regard, a period of 4 (four) months should be allowed.

Conclusion

43. The applicant has proved that she is a *bona fide* third party in respect of the sale agreement, wherefore the protection provided in section 15(9)(a) is applicable to the facts *in casu*.

44. The applicant has satisfied the requirements for an eviction order, in consequence whereof the relief should be granted as prayed for.

45. No argument has been advanced by either party duly represented why costs should not follow the event.

46. In the circumstances, an order is granted in accordance with a separate order attached hereto marked **"X"**.

J DE BEER
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 26 April 2023

Judgment delivered: 9 May 2023

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