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SOUTH AFRICA / JUDGMENT

## Booi and Another v Mabusela and Others (2219/2020) [2020] ZAECHGC 149 (1 December 2020) [2020] ZAECHGC 149

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COURT

Eastern Cape High Court, Grahamstown

BEFORE

B Maswazi

CASE / FILE NUMBER

2219/2020

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IN THE HIGH COURT OF SOUTH AFRICA

[EASTERN CAPE DIVISION]

[GRAHAMSTOWN]

CASE NO: 2219/2020

In the matter between

BULELANI BOOI

First Applicant

ZANDA BOOI

Second Applicant

And

MFUNDO MABUSELA

First Respondent

THANDEKA JUDITH MABUSELA

Second Respondent

AMATHUSE FAMILIE TRUST Third Respondent

THE REGISTRAR OF DEEDS

KING WILLIAMSTOWN

Fourth Respondent

CUMBERLEDGE ATTORNEYS Fifth Respondent

## JUDGEMENT

Maswazi AJ

## Introduction

- [1] This matter first served before court on the 27th of October 2020 as an urgent application for an interim relief. The interim relief was granted and made returnable on the 10th of November 2020. On the 10th November 2020, the matter came before me in the unopposed court, I declined to hear the matter on the basis that same was not properly before me it being clear to me that the matter was now opposed with parties having filed all papers including heads of argument. The matter was thus ready for argument in the opposed court.
- [2] It later transpired that the date of the 10th of November 2020 appearing in the interim order of the 27th of October 2020 was erroneous, the matter should have been, instead, postponed to the opposed court of the 12th of November 2020. When the administrative error was pointed out, I heard the matter in the opposed court of the 12th of November 2020. After hearing submissions, I reserved judgment and intimated to the parties that same would be handed down in due course.
- [3] The applicant had approached court on urgent basis on the 27th of November 2020, seeking an interim order in the following terms;

*“2 The rule nisi be and is hereby issued returnable on the 10th of November 2020 at 09h30 or soon thereafter as the matter may be heard calling upon the third respondent to show cause, if any, why an order in the following terms should not be made;*

2.1 The third respondent be and is hereby ordered to take all reasonable steps and do everything necessary to enable Conlon Law Professional Legal Services of 56 Devereux, Vincent, East London to transfer Erf 42432, situate at 101 Beachcomber Drive, Cove Rock, East London ( hereinafter referred to as “the Property) to the applicants.

2.2 That Third Respondent withdraws its instruction for the Fifth Respondent regarding transfer of the property.

2.3 ALTERNATIVELY if the property has already been transferred to the third party (sick), that transfer to be declared null and void ab initio and the name of the applicants to be substituted for that of third party and for the Fourth Respondent to register the Property in the name of the Applicants accordingly.

3. That the Property described in paragraph 2.1 shall not be transferred to anybody pending the return date thereof.

4. Today's costs are reserved.
5. The applicants are ordered to file their replying papers by the 6th of November 2020"
- [4] The applicants describe themselves as co-buyers of the property which is the subject of these proceedings. The first and second applicants are married to each other, but their marital regime is not disclosed in the papers. It is thus not clear whether they bought property jointly by virtue of their marriage regime or they are joint owners de facto.
- [5] The first and second respondents are the Trustees for the time being of third respondent, a trust duly registered in terms of the trust property laws of the Republic under the name and style of Amathusi Family Trust with Registration Number IT1665/01.
- [6] The fourth respondent is Registrar of Deeds. No relief is sought against the fourth respondent, however, the relief sought in the alternative seems to seek an order that the names of the applicants be entered into the records of the fourth respondent if the property has since been transferred to a third party. The efficacy of such a relief in these proceedings is somewhat doubtful in my view.
- [7] The fifth respondent is a firm of attorneys with its offices at 5 Tecoma Street, Berea, East London and once again no order is sought against the fifth respondent except that it "should file a notice to abide". This is again not very clear since it is not being stated how citing the fifth shall achieve the desired effect of making it file a notice to abide.
- [8] The relief sought in this matter is in the nature of a specific performance for the transfer of the Property to the applicants pursuant to an agreement of sale. The application is opposed only by the first, second and third respondents and they have duly filed their answering affidavit in this regard.
- [9] I have indicated earlier that an order in the nature as sought against the Registrar of deeds does not avail the respondents and indeed during the hearing, counsel for the applicants did not insist on that relief. I shall hereinafter say no more about it.

#### The contentions of the parties

- [10] In their founding affidavit, the applicants allege that on the 10th of August 2020 they concluded an offer to purchase Erf 42432, an immovable property situated at 104 Beachcomber Drive, Cove Rock and they attach a copy of the agreement whose contents, so they pray, must be incorporated into the founding affidavit.
- [11] The agreement is signed and there is no dispute that the signature appearing thereat are those of the applicants and those of the trustees being first and second respondents respectively.
- [12] I must state at this early stage that where the purchase price appears, there is two different amounts which seem to have been scratched off and there is a sum of R515 000.00 which appeared and is referred to as the purchase price. There is a sum of R505 000.00 which

appears as deposit payable within seven days from the date of signature. Of the amounts scratched off, there is an amount of R505 000.00 which is described as the deposit and the sum of R450 000.00 which appears as a purchase price. The effect of these deletions shall appear in due course.

- [13] The agreements itself is dated the 10th of August 2020. According to the agreement attached to the applicant's papers, it appears that the transaction was agreed to be a cash sale, accordingly, it was not subject to the usual suspensive condition relating to the purchaser securing a loan with a banking institution against the registration of a mortgage bond in favour of such a banking institution.
- [14] The applicants further allege that a company by the name of Conlon Prop, which is a company operating as estate agency, was retained to facilitate the sale of the property, whilst Conlon Legal Services had been retained by the respondents to attend to the transfer once the purchase price had been paid and all other formalities honoured.
- [15] It is the allegation of the applicants that they paid the purchase price on the 28th of August 2020 after having paid the transfer costs on the previous day, the 27th of September 2020. I shall assume that the purchase price paid by the applicants is the sum of R515 000.00 which is the figure appearing in the offer to purchase adjacent to the inscription, "purchase price".
- [16] On the 18th of September 2020, whilst Conlon Legal Services was busy with the transfer of the property, they received a letter from the fifth

respondent. It will be helpful to reproduce the letter as it is, its contents are important for the version which the first to third respondents proffered on the papers; the letter is marked annexure "C" in the applicant's papers and in its salient parts, it reads;

We confirm that we act on behalf of the Trustees for the time being of the Amathuse Family Trust (The Trust)

Our instruction are that on the 10th of August 2020 the Trust entered into a written Agreement of sale with Mr and Mrs Booi for the purchase of the above property. In terms of the agreement, the purchase price in the amount of R515 000-00 was payable in cash.

In terms of the paragraph 1.2 an initial deposit of R505 000.00 was payable within 7 days on request by the conveyancer/ acceptance of this offer.

Furthermore in terms paragraph 3: The purchaser shall within 14 (fourteen calendar days, after being called upon by the conveyancer, make payment of the full balance of the purchase price to the conveyancer.

Can you please confirm with proof the following:

Has the full purchase price been secured within the prescribed period as required in the agreement?

If so, when was the purchase and transfer costs paid?

If the purchase price has not been secured, please furnish our office with proof of your to terms notice addressed to the purchase (sic)

Our client denies that he cancelled the sale agreement, but submits that he had not heard from your office regarding confirmation of the payment of the purchase price and transfer costs and therefore assumed that the matter was not proceeding.”

Furthermore, we submit that your claim for the full transfer costs to be paid is in violation of the apportionment of fees for wasted costs as prescribed by the Legal Practice Council.

Finally our instructions are to defend any proceedings that may be instituted against our client.”

- [17] Prior to the letter and on the 17th of September 2020 first and second respondents had written a whatsapp message to one Esme, an employee of the Conlon Prop, an estate agent responsible for the sale of the property, advising her that the third respondent is cancelling the sale agreement between itself and the applicants.
- [18] It appears that from that date the third respondent proceeded to remove the “SOLD” signage which Esme had erected on the property as an indication that the property had since been sold. It also appears that just after the “SOLD” signage erected by Conlon Prop, a new one, erected by Chas Everitt, presumably another estate agent, immediately went up next to the property.
- [19] The applicants then say, these events gave birth to an apprehension that the property must have been sold to a third party and they launched the present proceedings. They further contend that the third respondent is in breach of the agreement of sale.
- [20] They state that the third respondent did not communicate with them regarding their contemplated repudiation of the agreement of sale and that by instructing the fifth respondent to write the letter quoted above, the third respondent was clearly bracing for a fight.
- [21] The first, second and third respondent, for their part have filed an answering affidavit in which they, in limine attack the urgency of the matter, disavow the presence of the prima facie right and all other requisites of an interim interdict. On the merits, the respondents deny that there was ever a contract between

them as the Trust and the applicants. I shall not deal with the issue of urgency, same was before the court when it dealt with the interim relief, that it issued the interim relief renders that issue res judicata. In any event, counsel for the respondents did not urge me to consider same at all. A wise move, in my view.

- [22] As I understand the respondents' papers, the reason they claim the non-existence of binding contract is twofold, first they claim that the applicants never signed the written agreement by midnight on the 10th of August 2020 as required by the agreement and second that the final amount for the purchase price in the sum of R515 000.00 (Five Hundred and Fifteen Thousand Rand) was not agreed between the parties at the time of the signature of the agreement.
- [23] The latter part of this defence is predicated on the understanding that the applicants never initialled the part that related to the purchase price finally agreed upon since same was no longer the one agreed upon the 10th of August 2020 when the offer to purchase was signed by the applicants.
- [24] The former part of the defence rests on the interpretation of clause 18.2 of the Agreement which provides;

*"The acceptance hereof by the seller must be agreed upon before midnight on the 10th of August 2020 and until then it is irrevocable by the purchaser".*

The only sensible interpretation I am able to give to this clause is that the applicants' offer becomes irrevocable before midnight the 10th of August 2020. The practical effect of this clause is somewhat lost to me. This means that the offer to purchase is irrevocable by the applicants before midnight of the 10th of August 2020. This clause does not have an impact into the actual dispute between the parties.

- [25] The respondents go on to allege that as there is no valid agreement between the applicants and the Trust, there was no need to comply with any of the suspensive conditions alleged by the applicants in relation to the "SOLD" signage referred to by the applicant's in their founding affidavit.
- [26] The respondents do not say a word about the letter from the fifth respondents whose contents have been elaborately set out above, neither do they see it necessary to make reference to the whatsapp messages exchanged between them and estate agent in relation to the cancellation of the Agreement.
- [27] There are two significant documents that the respondents attach to their papers. The first is an email from estate agent dated the 11th of August 2020, who is, in which she states as follows;

*"Good Day Mr Mabusela*

Hope that you are doing well on your side

As per our discussion herewith the cash offer that I have received yesterday as per attachment. Please have a look at the offer, and let me know how you feel, as I do feel that we have received a market related price on the plot as I have been selling the last fifteen years in Cove Rock and I have been living in there for twenty three years. So I do know what the market is currently doing. The following plots just down the road and lovely sea view number 70 and 71 Cockle Crescent has

sold for R450 000.00 each. I have also sold a beautiful plot overlooking river and sea view at 992m2 for R420 000.00 six months ago.

The buyer initially wanted to put a lower offer in, but I said with the distant views and size and what I recently have sold, they have also taken into account that they have to still pay transfer costs.

The commission is R25 875.00 so if we have to deduct of (sic) the presented price of R450 000.00 you will receive

Should you be happy please complete the offer to purchase, and initial purchase as I see it is a Family Trust, are the only person that needs to sign sic.

On page 4 point 8 under domicilium just write down were you want your legal documents to go to (sic).

We will be doing the transfer and if all goes well with no hiccups from the deeds office and the rates clearance we would be looking at six weeks to complete the transfer.”

[28] The above is an email from the estate agent to one of the trustees of the third respondent, informing the latter of an offer to purchase which has been agreed by the purchasers in the sum of R450 000.00. The email is dated the 11th of August 2020 a day after the applicants, as they allege, entered into an agreement with the respondents. The conclusion is inescapable that the agreement being sent to the respondents by the estate agent is the same agreement that was signed by the applicants on the 10th of August 2020, save for one material difference, namely, the purchase price. The applicants, it must be remembered allege that the purchase price at which they offered to purchase the property was always a sum of R515 000.00 which they paid in cash in terms of the agreement.

[29] There is a clear dispute of fact in relation to whether the agreement signed by the applicants on the 10th of August 2020 was for a purchase price of R515 000.00 as alleged by the applicants or for R450 000.00 as it appears in the email referred to above. Whether the dispute of fact is material is a matter I shall deal with in due course.

[30] The second document attached by the respondent in their answering papers is the actual agreement referred to in the email of the 11th of August 2020. Significantly, that agreement is consistent with the email from the estate agent in respect of the purchase price, namely, a sum of R450 000.00.

[31] The respondents' take in relation to the above is interesting, it is that the offer of the 10th of August 2020 in the sum of R450 000.00 was signed by the applicants and their witnesses and sent to them by the estate agent, and they never returned same back to the estate agent in the same amount. Therefore, so allege the respondents, no agreement came into existence on the 10th of August 2020 as alleged by the applicants.

[32] There is therefore an uncertainty as to whether on the 10th of August 2020 when the applicants signed the agreement or at any further period, when the respondents did so, there was a definite

agreement in relation to the purchase price. This is so because the written agreement attached to the applicant's papers has figures specifically relating to the purchase price scratched off and substituted for a new purchase price.

[33] The respondents allege as follows in paragraphs 20 and 21 of their answering affidavit with regard to the origin of the sum of R515 000.00 as another proposed purchase price;

*"On the 17th of August 2020, I still indicated to Coetzee that our asking price of R525 000.00 still stands and we can cancel the deal if applicants*

cannot increase their offer to R525 000.00. I also informed Coetzee that we are willing to accept R515 000.00 (Five Hundred and Fifteen Thousand Rand and Zero Cents) as counter offer, see annexure I"

Coetzee called me on the 17th of August 2020 in the afternoon or 18 August 2020 in the morning to inform me that an amount of R515 000.00 was being offered by the applicants."

[34] In their replying affidavit, the applicants deal as follows with the above allegations;

*"Ad Paragraphs 10 to 31*

I note the averments made in these paragraphs are irrelevant, do not add any value to the issue at hand, namely whether a valid contract existed between the parties. They are thus unnecessary material and for that, at the hearing of this application, I shall make an application for the striking out of (sic) this affidavit of these paragraphs. As I have already indicated, it is common cause that a valid written agreement of sale of property existed between the parties for all reasons I have highlighted under "CONTEXT."

[35] The respondents, for instance, say they rejected the sum of R450 000.00 as contained in the email referred to above and from that point it appears that there were various offers and counter offers made between the parties. It will be recalled that the amount of R450 000.00 was contained in the offer to purchase signed by the applicants on the 10th of August 2020, which was rejected by the respondents, hence the various other offers and counter offers. This then explains the cancellations of the various amounts appearing in the offer to purchase attached to the applicant's founding papers.

[36] It is therefore clear that the parties join issue on the question whether there was an agreement concluded on the 10th of August 2020 as alleged by the applicants which conforms to the formalities of valid contract of sale. As I see it, the issue is thus both a factual and a legal one. On the factual side, I must decide whether there was a meeting of the minds in relation to the purchase price that was finally paid by the applicants as they allege. If there was, and only in that event, I must decide whether the alleged agreement conforms to the statutory formalities. Axiomatically, these being motion proceedings where

a final relief is sought, I must untie all the factual logjams by using the formula in Plasmon Evans case.[1] On the other hand whether the agreement, if any, complies with the requisite formalities will have to be decided through the application of the ordinary canons of statutory interpretation.[2] This is the factual context in which this matter must be decided

- [37] It is with the above in mind that I now turn to consider the applicable legal principles in a contract of sale of land. This approach shall illuminate my path towards a conclusion whether there was an agreement between the parties or not. After all, the applicant's cause of action being breach of contract, takes the existence or otherwise of the contract at the centre of the inquiry. Consequently, the applicant must establish the existence of a contract.

#### The applicable legal principles and analysis

- [38] At common law, a contract is, at a very basic level, defined as an agreement entered into with the intention of creating reciprocal rights and obligations. [3] However contracts of various types have additional definitional elements over and above what is required at common law. Thus a

contract comes into existence where a party offers to another party who accepts to be bound thereby with the serious intention of establishing binding obligations.[4]

- [39] The fact that the parties have a contract, does not necessarily mean that they have a valid contract. For their contract to be valid, the parties must have the necessary contractual capacity, the performance undertaken in terms of the contract must be possible at the time of contracting and the contract itself and the performance thereof must be lawful, whilst formalities constitutive of a contract must have been complied with.[5] By formalities constitutive of a contract it is meant and includes statutory formalities.

- [40] Where an offer made by one party is not accepted by the other party, instead the latter party makes a new offer, the offeror becomes the offeree and vice versa and the new offer becomes a counter offer.

- [41] When it comes to a sale of land, the legislature has imposed additional requirements and formalities that a contract for the sale of land must comply with.[6] Section 2(1) of the Alienation of Land Act, 1981 (the Act), deals with alienation of land and it provides as follows;

*"No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or their agents acting on their written authority"*

- [42] The principal purpose of this provision was referred to as follows by Diamond AJA, in reference to a previous and similarly worded provision in Wendy wood Developments (Pty) Ltd v Rieger[7] where he said;

*“Sec. 1 of the 1957 Act is designed to ensure that in such important transaction as the sales of landed property the possibility of dispute or disagreement should be reduced to a minimum. In order to achieve this the Legislature requires that the contract be in writing and that agents who sign the contracts for their principals are authorised in writing to sign”*

- [42] In view of the peremptory construction of the above provisions, the parties are not entitled to waive them.[8] However since the provision is the alteration of the common law, it must be strictly interpreted.[9]
- [44] What is clear from the statutory provisions referred to above is that it is not enough that the agreement is in writing, it must in addition be signed by the parties or by their agents duly authorised in writing.
- [45] On the basis of the above legal principles, I proceed to determine whether on the facts presented, there was a meeting of the minds in relation to the purchase price of R515 0000.00 as alleged by the applicant and disavowed by the respondents.

Did the Parties agree on the purchase price?

- [46] If the answer to the above question is in the affirmative then the second question is whether the agreement complies with the statutory formalities as alluded to above, if so, it means the respondents breached that agreement. Conversely, if the answer is in the negative, then there was nothing to breach and the application must fail. In that event, there was also no agreement whose compliance must be measured against the statutory formalities.
- [47] I have already indicated that the question whether the minds of the parties merged into one in respect of the purchase price, is a factual question to be decided on the basis of the formula applicable to such inquiries in motion proceedings.[10]
- [49] The applicants allege that the agreement they seek to enforce was entered into on the 10th of August 2020. However, on the consideration of the respondents' version which is neither farfetched nor so untenable that it must be rejected on the papers, this was not the case. On the contrary, what appears on the papers is that on the 10th of August 2020, the applicants signed an offer to purchase in the sum of R450 000.00, they dated that offer to purchase the 10th of August 2020. The effect of their signature did not establish any agreement, it was just an offer to purchase the property on the price then appearing therein and incidentally proposed by the applicants, since this was their offer to the respondents.
- [50] This is because before it was signed by the other party, the offer to purchase could not constitute an agreement, section 2(1) of the Act requires a deed of alienation to be signed by both parties. On the 10th of August 2020, the offer to purchase was not as yet signed by the respondents. For that reason it fell short of compliance with the statutory injunction in section 2(1) of the Act. This however is not the end of the inquiry, the signature of the applicants in the offer to purchase constituted a first step in the juridical trajectory towards the conclusion of the agreement in the manner and style as required by the Act. Put differently, on the 10th of August 2020, there was an offer by the applicants to purchase the

property, and that was a necessary ingredient for any agreement to exist.

[51] As I understand this, there was nothing untoward with the offer to purchase not being signed by the respondents on the 10th of August 2020. The easy explanation is that it was an offer that they were entitled to apply their minds to or even make a counter

offer. Incidentally, the respondents chose the latter route, they offered a sum of R525 000.00 as the purchase price they were prepared to accept for the property. At that point, as alluded to above, the sitting arrangements changed, the offerors became offerees, and vice versa.

[52] However, the respondents' counter offer was not accepted by the applicants, instead the applicants reassumed their original position as offerors, this time they offered as sum of R515 000.00. This is the offer that the respondents accepted, they expressed this acceptance as follows in their answering affidavit;

On the 17th of August 2020, I still indicated to Coetzee that our asking price of R525 000.00 still stands and we can cancel the deal if applicants cannot increase their offer to R525 000.00. I also informed Coetzee that we are willing to accept R515 000.00 (Five Hundred and Fifteen Thousand Rand and Zero Cents) as counter offer, see annexure I"

[53] The respondents further states as follows in the subsequent paragraphs;

*"On the 22nd of August 2020 the second respondents and co-trustee of the trust sent an email attaching the signed OTP to Coetzee and copied me.*

Coetzee is the estate agent and reference to the OTP is to the offer to purchase signed by the applicants on the 10th of August

2020. The respondents go on to state that once they signed the offer to purchase, the estate agent proceeded to delete all the previous amounts that had hitherto been under discussion by the parties. It will be recalled that the purchase amount on the basis of which the respondents were now appending their respective signatures was a proposed price from the applicants.

[54] It was argued by Mr Selani, who appeared for the respondents that in relation to the amount of R515 000.00 the respondents were offerors awaiting for the acceptance of their offer by the applicants who by time had become offerees and that the latter never accepted the offer from the respondents.

[55] Relying on the Supreme Court of Appeal decision in *Rockbreakers and Parts Pty Limited v Rolag Property Trading (Pty) Ltd*[11], Mr Selani argued that failure by the applicants to signify their acceptance of the offer by the respondents meant that there was no agreement between the parties. This submission proceed from a wrong premise, and that is that the applicants were offerees. They were not, from the respondents' own showing, the applicants originated the offer of R515 000.00 which the respondents accepted by appending their respective signatures to the offer to purchase already signed by the applicants.

[56] In any event I find the facts in the Rockbreakers and Parts case distinguishable. There, the offeree who received an offer to purchase added a manuscript insertion of his own before signing same. The addition was a suspensive condition the effect of which was to subject the sale to “the seller obtaining registration of the subdivision of the property”. Tshiqi AJA with whom Wallis AJA concurred held at paragraph 8 thereof;

*“In order to determine whether the defence raised can be sustained it is necessary to determine the effect of the manuscript insertion on the rights and obligations of the parties. It follows from the authorities cited above that if the manuscript insertion embodied a material alteration to the contractual and thus constituted a counter-offer that was never accepted in writing, then the contract would be unenforceable”*

[57] That is not the case in this matter. Here the respondents merely appended their signature to the offer made by the applicants with the understanding that there was now an agreement in the purchase price for a sum of R515 000.00. As already demonstrated above, respondents’ acceptance of the sum of R515 000.00 did not constitute a counter-offer, it was pure and simply an acceptance of the offer. I therefore conclude that the minds of the parties met once the respondents signed the offer of R515 000.00 on the 22nd of August 2020.

[58] There is therefore no material dispute of fact in relation to the parties’ meeting of the minds regarding purchase price. To hold otherwise would mean that one must reject the version of the respondents. That is not possible when that version is, at least in its material aspects consonant with the version of the applicant. I am fortified in this conclusion by the principle in *Wightman t/a JW Construction v Headfour Pty Ltd*

[12] where the definition of a material dispute of fact was succinctly set out.

[59] The letter the fifth respondents wrote on behalf of the respondents which is elaborately quoted above is not without significance because it contains telling assertions in relation to the existence of the agreement as alleged by the applicant. It reinforces the conclusion that as at the date of the letter the respondents considered themselves bound by the agreement. Matters seem to have changed once the respondents received a better offer and decided to resile so unceremoniously from the agreement.

[60] I am therefore persuaded that the respondents are in breach of the agreement entered into between the parties.

Did the agreement comply with requisite formalities?

[61] I have already indicated that an agreement whose subject is sale or alienation of land must be in writing and signed by both parties and their agents who are authorised in writing, if the parties are not signing themselves. I have also indicated above that the existence of the agreement does not necessarily mean same is enforceable, the agreement must leave up to the requisite formalities, in this case, section 2(1) of the Act.

- [62] The requirement that the deed of alienation contemplated in the provisions of the Act must be signed has received considerable judicial authority.[13] It has been held for instance that the signatures do not necessarily have to be in the same document.[14]
- [63] The complaint by the respondents in relation to the formalities of the contract is not that the contract is not signed but rather that when the respondents signed in final acceptance of the offer to purchase, the applicants did not initial to signify their acceptance of that amount then agreed upon as the purchase price.
- [64] I have already concluded that this argument would be apposite only if the sum of R515 000.00 finally agreed upon was a counter offer. It was not, the applicant having signed the offer to purchase and having offered the purchase price, there was nothing more they could do. It was incumbent upon the respondents to sign the offer in attestation of their acceptance of the offer.
- [65] I am therefore satisfied that the contract complied with all the requisite formalities of the Act. The application must thus succeed.

#### Costs

- [66] The applicants sought costs against the first, second and third respondents. Applicants have been successful, they are therefore entitled to costs. I see no reason to depart from the general rule that costs ought to follow the result. The respondents did not urge me otherwise.

#### Concluding remarks

- [67] One last thing bears mention, the estate agent appointed to facilitate sale in this matter is a firm called Conlon Prop, and the firm appointed as conveyancers for the transfer of the property is called Conlon Law, which is defined as the division of Conlon Young Incorporated. I assume this is a firm of attorneys since the Legal Practice Act, 2014 requires conveyancers to be attorneys.[15] Conlon Prop, the estate agency, is also a division of Conlon Young Incorporated. The relationship between the estate agents and the conveyancers in this matter seems rather curious. Allegations of unsavoury marketing practices between conveyancers and estate agents have become all too frequent in this jurisdiction. This has led the Legal Practice Council to initiate an investigation since in some instances, there are allegations of the buying of conveyancing work by attorneys using estate agents. For these reasons I shall order that this order be placed at the disposal of the Director of the Eastern Cape Legal Practice Council for the Council to consider and take such steps as it deems appropriate.
- [68] In the result the following order shall issue;
1. The rule nisi on the 27th of October 2020 hereby confirmed.

2. First and Second Respondents in their capacities and trustees for the time being of the Amathusi Trust or any other trustees of the said Trust are hereby ordered to take all steps.
3. The Trustees for the time being of the Amathusi Trust are hereby ordered to pay costs of this application, such costs to include the reserved costs of the 27th of October 2020.
4. The Registrar of this Court is ordered to send a copy of this judgment to Director of the Eastern Cape Legal Practice Council.

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B Maswazi

Judge of the High Court (acting)

For the applicants: Adv Msizi

Instructed by Joko and Co Incorporated

No 3 New Street

GRAHAMSTOWN

Ref: Mr S Joko/ B3

For the Respondents: Mr Selane

Instructed by: Anderson Mmamadi Selane Attorneys

No 799 Arcadia Street

PRETORIA

REF: AMS/LIT/WSA/M00816

Date heard: 12 November 2020

Date delivered: 1st December 2020

[1] Plascon Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd 1984(3) AD 623 at 634E-I and 635A-B

[2] Natal Pension Funds v Endumeni Local Municipality and Another 2012(4) SA 593 para 18 see also KPMG Chartered Accountants (SA) v Securefin Ltd and Another 2009(4) SA 399 (SCA) para 39

[3] George v Fairmead (Pty) Ltd 1958 (2) SA 465 A

[4] See Pillay v Shaik [2009] 2 All SA 435 (SCA) para 50 and 52 see also

[5] Peters, Flamman & Co v Kokstad Municipality 1919 AD 427 at 434

[6] Alienation of Land Act, 1981

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- [7] 1971(3) SA 28 see also *Da Mata v Otto* 1971 (1) SA 763 (T) 772
- [8] *Odendaalrust Municipality v New Nigel Estate Gold Mining Co Ltd* 1948(2) SA 656 (O) 663
- [9] *Pretoria Township Ltd v Pretoria Municipality* 1913 TPD 362 368
- [10] See footnote 1 above.
- [11] 2010(2) SA 400 (SCA)
- [12] 2008 (3) SA 371 (SCA)
- [13] *Craib v Crisp* 1984 (3) SA 594 (T), *Royker v Medicine* 1962(4) SA 281 (C)), *Kotze v Newmont SA Ltd* 1977(3) SA 368, *Hirsch v Nel* 1948(3) SA 686 (A)
- [14] *Johnson v Leal* 1980(3) SA 927 A at 937-H; 938B-C and the authorities cited therein
- [15] Section 1 of the Legal Practice Act, 2014.
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