

SOUTH AFRICA / JUDGMENT

Burger and Another v Edenglo Holdings (Pty) Ltd and Others (6534/18)

[2018] ZAWCHC 141 (4 October 2018)

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COURT

Western Cape High Court, Cape Town

BEFORE

Ndita

CASE / FILE NUMBER

6534/18

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IN

THE HIGH COURT OF SOUTH AFRICA

(WESTERN

CAPE HIGH COURT)

CASE

NO: 6534/18

In

the matter between:

DIRK
BURGER
1st Applicant
NADIA
BURGER
2nd Applicant
and
EDENGLO
HOLDINGS (PTY) LTD
1st
Respondent
LEONIE
DEMPERS
2nd

Respondent
MINERVA
MERISSA BAUGAARD
3rd
Respondent
IAN
WILLIAM JOHN BAUGAARD
4th
Respondent
FIRST
NATIONAL BANK LIMITED
5th
Respondent
REGISTRAR
OF DEEDS, CAPE TOWN
6th Respondent
WONDERFUL
CHOICE INVESTMENTS
7th Respondent
GERT
DE WET N.O.
8th
Respondent
GLADYS
NKATEKO NGOBENI N.O.
9th Respondent

JUDGMENT

delivered this 4th day of October 2018

NDITA, J:

- [1] This an application to set aside the transfer of certain immovable property, effected pursuant to agreements and/or transfers alleged to be fraudulent and/or invalid, and null and void. More particularly, the relief sought by the Applicants is couched in the following terms:

“1. That the sale and subsequent transfer of the immovable property, known as Erf [...], Brackenfell, situated at [...] K. Street, Protea Heights, Brackenfell, Western Cape (“the property”) from the Applicants to Seventh Respondent, and all subsequent agreements and transfers relating to the property be declared fraudulent and/or invalid and, null and void.

2. That the sale and subsequent transfer of the property from the Applicants to the Seventh Respondent, and all subsequent agreements and transfers relating to the property be set aside.

3. That the Sixth Respondent be authorized and directed to register the property in the name of the Applicants,
4. That any party opposing the relief sought be ordered to pay the costs of the application.”

The Application is unopposed by all the Respondents but the Third and Fourth Respondents. The Fifth Respondent filed a notice to oppose the application, but failed to file the opposing papers, and at the hearing of this matter, there was no appearance for it. The matter proceeded on the basis that it was opposed only by the Third and Fourth Respondents (“the Respondents”).

The Factual Background

- [2] The factual background underpinning this application is largely uncontested, and as can be discerned from the affidavit of the First Applicant, Mr Dirk Burger, may be summarised thus: The Applicants, who are married to each other, purchased Erf [...], Brackenfell in 2002 in order to build their own family home. To this end, a bond in favour of SA Homeloans was registered over the property and they built the house as planned. In 2014 the First Applicant,

who at the time was employed by the South African National Defence Force (“SANDAF”) experienced financial difficulties, and the Applicants could no longer afford to pay the bond instalments. According to the Applicants, as a result of their failure to make regular payments, legal action was instituted against them, and the Second Applicant felt the pressure more because she was residing at the property, whilst the First Applicant was placed at the border in Mpumalanga.

- [3] The Applicants aver that the Second Applicant came across an advertisement by the First Respondent, Edenglo Holdings (Pty) Ltd (“Edenglo”), which stated that the latter assists individuals experiencing financial hardship, and who could not afford their bond repayments, to save their immovable property from execution. They responded to the advert and were advised by Ms. Leonie Dempers, the Second Respondent (“Dempers”), that Edenglo would facilitate the sale of the property to an investor. The terms of the Edenglo scheme, as explained to them by Dempers, were that ‘for all practical purposes’, they would remain the owners of the property and would remain in possession or occupation of the property. This was so because

in terms of the scheme, they would be permitted to rent the property for a period of seven years, whereafter they had a right to buy it back from the investor. Dempers further informed them that the purchase price for the property would, after certain deductions, be paid into a trust account for investment purposes. However, a portion of the capital amount would be made available to the Applicants at the end of the seven year period, to enable them to buy back their own property. According to the First Applicant, Dempers assured them that they would be permitted to buy back the property after 7 years, for an amount not exceeding that of the outstanding bond at the time of transfer of the property to the investor.

- [4] The Applicants further allege that after the first meeting with Dempers, she advised them that she had secured an investor, Wonderful Choice Enterprise (Pty) Ltd (“Wonderful Choice”), the Seventh Respondent. Wonderful Choice would purchase the property for an amount of R1 400 000, 00 whilst the Second Applicant remained in occupation. It was agreed that the Applicants would pay a subsidised lease in the amount of R3500.00 per month to Edenglo, who would in turn, pay the lease over to Wonderful Choice. In terms of the agreement, an amount of R400 000.00 from the purchase price would subsidise the Applicants’ monthly rental instalments for a period of seven years. The aforesaid

amount would be payable to Wonderful Choice by what seems to be its investment arm, Wonderful Choice Investments. According to Clause 5.1 of the lease agreement signed by the Second Applicant, but for the subsidy of R400 000, 00 the monthly rental amount would have been a sum of R5595.00 for each month for seven years. Instead of the aforesaid amount, they had to pay an amount of R3500.

- [5] Pursuant to the sale agreement, the Applicants were required by the conveyancing attorney, MD Mitchell Inc., to sign an affidavit confirming that Edenglo would receive the proceeds of the sale of the property and administer them on their behalf. It is important to refer to the entire affidavit. It reads thus:

“1. We, the undersigned, hereby confirm under oath that:

...

hereby authorize and instruct MD Mitchell Inc. to pay the following disbursements from the proceeds of the purchase price: professional fees/agents, all legal costs, bond cancellation costs, consultant fee to obtain clearance figures from the Municipality, all rates, taxes, levies, and charges owing to any Local Authority or Body Corporate, Home Owners Association, electrical compliance certificate, FICA Fees up to date registration of transfer.

2. We confirm that according to the Sale Agreement an amount of R3500 minus the city council and water accounts will be paid to us on date of the successful registration in the Cape Town Deeds Office.
3. We acknowledge/confirm that the balance of the proceeds of the purchase price is to be paid to:

EDENGLO HOLDINGS [PROPRIETARY LIMITED

Who will administrate the proceeds on our behalf. We hereby confirm/acknowledge that all details were carefully discussed with us and that we understand that we will not receive any proceeds from the profit of the sale of our property after the successful registration in the Deeds Office.

3. We acknowledge/confirm that we are aware of the fact that the deposit in the amount of R400 000.00 [four hundred thousand rand], which is payable by the purchaser, will be credited to my lease agreement,

after registration. The deposit amount is therefore utilized to subsidise the lease amount of R3500.00 per month for 7 years as from date of registration in the purchaser's name. We are aware that the monthly rental on the property would have been higher if it was not subsidised by the deposit above."

- [6] According to the Applicants, at the time of the signing of the agreement they were happy to depose to the above affidavit, as it was never their intention sell the property 'in the ordinary sense of the word'. They were satisfied with the fact that the property would be registered in the name of the investor for a limited time, subject to their right to remain in possession. Furthermore they believed that they would receive no financial benefit from the sale of the property, as the truest purpose of the scheme was to rescue their home, as opposed to selling it. In addition, the Applicants aver that Dempers had advised that she would, from the purchase price, pay off some of their debt, with the balance to be invested as earlier alluded to. The foregoing as well as desperate attempt to save their property, caused them to agree to sell their property, which still had a bond of R400 000.00 registered over it.
- [7] The Applicants allege that after the property had been sold, they duly paid their monthly rent to Edenglo as stipulated in the agreement. Wonderful Choice paid the R400 000.00 deposit allocated as rental and obtained a bond for the balance of the purchase price from First National Bank Limited ("FNB"), the Fifth Respondent, in the amount of R1 000 000. 00.
- [8] On 7 October 2015, the Applicants received a letter from Venn & Muller attorneys, who advised them that Edenglo had failed to make payment of the monthly rental instalments to Wonderful Choice, and that such failure resulted in the latter failing to effect the bond payments. The Applicants were requested to tender all further rental payments directly to the First National Bank ("FNB"), the Fifth Respondent. It does not appear from the papers that any payments were tendered to FNB. The papers reveal that Edenglo did not pay the monthly rentals to Wonderful Choice. Because

Wonderful Choice did not have the funds to service the bond, it was liquidated and the property was sold by the joint liquidators (the Eighth and Ninth Respondents) to the Third and Fourth Respondent.

- [9] According to the Applicants, during May 2017, they discovered that the Edenglo scheme was a scam, and that Edenglo and Dempers were being investigated by the Hawks for fraud. The Applicants state that at the auction of the property they informed the Respondents that they were fraudulently dispossessed of the property, and that they intended to institute legal proceedings to set aside the fraudulent transactions and get their property back.

[10] It is undisputed that the Applicants do not know what happened to the balance of the purchase price paid by Wonderful Choice, as well as the once off rental payment in the sum of R400 000.00. All they know is that the scheme was fraudulent, in that it resulted in them losing their home without receiving any real benefit or payment. Furthermore, had they known that that would be the case, they would not have agreed to the transfer of the property to Wonderful Choice.

The Answering Affidavit (Third and Fourth Respondents)

[11] As earlier pointed out, the application is opposed by the Third and Fourth Respondents. The Respondents confirm that the property in question was judicially attached and sold to them by the Eighth and Ninth Respondents (the joint liquidators of the Wonderful Choice) on 22 August 2016. Registration and transfer passed on to them on 9 November 2016. It is common cause that the Respondents financed a portion of the purchase price by means of a mortgage bond registered in favour of FNB for the sum of R1 080 000.00. It must be stated from the outset that the Respondents understandably concede that they are unable to refute any of the allegations made by the Applicants relating to the sale of the property, as they were not party to the agreement. Their basis for opposing the application is premised on the following factors:

1. The Applicants adduced no evidence to establish that either Edenglo or Wonderful Choice lacked the intention to honour their obligations towards the Applicants at the time the latter sold and transferred the property to Wonderful Choice.
2. Even if the intentions of Edenglo and Wonderful Choice are found not to have been honourable, the transaction between the Applicants and Wonderful Choice is voidable, and as such the Respondent's acquired good title to the property.
3. The Respondents allege that the Applicants, on their own version, stated that they discovered that the Edenglo scheme was a scam, yet they took no steps to cancel the agreement and only launched this application a year later, that not being a reasonable time. Furthermore, by delaying to launch the present application, the Applicants elected to uphold the sale of their property to Wonderful Choice.

[12] According to the Respondents, the present application is also not bona fide, as its main purpose is to delay the eviction of the Applicants from the property. This, according to their version, is particularly so because on 1 November 2017, when the Respondents' eviction application served for the first time before Samela J, the Applicants, through an order obtained by agreement between the parties, were afforded an opportunity to launch an application to set aside the sale of the property to Wonderful Choice and the matter was postponed to 24 November 2017. They failed to do so. On 24 November 2017, Davis J, afforded them a further indulgence and ordered the application be postponed to 29 January 2018, and that the Applicants should, by 29 January 2018, institute proceedings for the setting aside of the transfer of their property before 22 January 2018, failing which the Respondents would be entitled to proceed with the application on an unopposed basis. On 1

February 2018 Holderness AJ, postponed the eviction application to 15 May 2018 and the Applicants in casu, having failed to file an answering affidavit, were ordered to do so in accordance with the Rules of Court. When they again failed to serve and file an answering affidavit, the Respondents launched a Chamber Book application for an order compelling the Applicants to deliver their answering papers in the eviction application, and the order was granted on 19 April 2018. On 15 May 2018, Sher J, granted an order in terms of which the Applicants were to vacate the property by 28 September 2018, on condition that the present application should be dismissed.

- [13] The Respondents deny that the Applicants did not intend to sell their property to Wonderful Choice. Similarly, so allege the Respondents, the Applicants, on their own version, did obtain a benefit from the contract because they avoided a foreclosure by the bondholder, certain of their debts would be paid off and they would continue to occupy the property on a subsidised basis.
- [14] The Respondents further deny that the property was sold to them on auction. As earlier stated, it was by private treaty. Accordingly, they deny that the Applicants had informed them that they had been fraudulently deprived of their property at the auction.
- [15] The Applicants did not file a replying affidavit and as such the matter must be determined on the basis of the founding and opposing affidavits as well as relevant annexures.

Analysis

- [16] It is well to recall that the Applicants base their case on the allegation that the contract they entered into with Edenglo and Wonderful Choice, as facilitated by Dempers, was a fraudulent scheme, which rendered the agreement void. During argument, the Applicants raised for the first time the fact that the purpose of the Edenglo scheme is against public policy and therefore ineffectual. I revert to this issue later in this judgment.
- [17] With regard to the fraud allegations, the Applicants do not allege that they were induced to enter into the contract by a misrepresentation or that Edenglo and Wonderful Choice lacked the intention to honour their obligations towards the Applicants at the time when they sold and transferred the property. One appreciates that fraud may always be inferred or presumed from the circumstances or conditions of the contracting parties, but in the matter at hand I am constrained to so find. The Applicants emphasise that they did not intend to lose ownership of the property. The contract of sale between the Applicants and Wonderful Choice has not been attached to these papers. However, it is clear from the founding affidavit that the Applicants had no illusions about the type of contract they entered into. The terms were clear: that they would rent their home and some of their debts would be settled from the proceeds of the sale, and after seven years, they would repurchase the property. It seems to me that they thought that the real intention behind the sale and the anticipated resale was to allow the Applicants to retain possession of the property. This is understandable, given that the Applicants, by their own admission, had fallen into hard

times and could no longer secure finance credit. It therefore cannot be said that there was any dishonesty or subterfuge about the transaction between the parties. I am fortified in my view by the dictum in *S v Friedman Motors (Pty) Ltd and Another* 1972

(1) SA 76 (T) at 80G to H:

“ . . . If two people, instead of making a contract for a loan of money by one of them to the other, genuinely agree to achieve a similar result through the sale and repurchase of a chattel, there is no room for an application of the maxim plus valet quod agitur quam quod simulate concipitur. The transaction is intended to be one of sale and repurchase, and that, at common law, is what it is.”

[18] Counsel for the Applicants placed reliance on two cases from this division, for the contention that this court must find that the Edenglo scheme was fraudulent. What follows in this judgment is the analysis of the reasons advanced by the court in each of the authorities relied upon.

Mottel and Others v Altmar Properties and Others (1974/9/2012)

[2013] ZAWCHC 115 (20 June 2013):

With regard to fraudulent misrepresentation, Savage AJ, (as she then was) found that the applicants in this matter responded to an advertisement to consolidate their debts and not to sell their homes, yet they were taken to Skei's attorneys to sign agreements permanently selling their properties to the Hagans. The Hagans in turn failed to disclose that they had been paid to induce them to engage in the scheme. The court found that it is highly improbable that the Applicants would have signed the agreement if the above facts had been disclosed to them.

Morley v Lambrechts (A 526/2013) [2014] ZAWCHC 124 (21 August 2014):

In the *Morley* matter Binns-Ward J, writing for the full bench, found that the Respondent did not fully appreciate that the effect of the tenor of the deeds of contract that she executed was the alienation of her property and that had she known, she would never have signed the agreement, because her intention was to pledge the property as security for a loan that she understood she was advancing to her son.

[19] It is clear from the foregoing that insofar as fraudulent misrepresentation is concerned, the reliance on the two matters above is not helpful to the Applicants, as the facts are clearly distinguishable. It is my judgment that it is difficult on the facts in casu to come to the conclusion that the Edenglo scheme was fraudulent. Whether it is against public policy is another question.

[20] I have earlier indicated that the Applicants also argued that the contract is against public policy. Mr Newton, who represented the Respondents, submitted that the Applicants are not permitted to raise, for the first time, in argument the fact that they also rely on considerations of public policy to have the agreements declared ineffective. Mr Newton correctly stressed that it is trite that in motion proceedings the affidavits constitute pleadings and the evidence, as the Respondents, they have the right to know what case they

have to meet and to respond thereto. Mr Du Preez, who appeared for the Applicants, on the other hand, stressed that the court has a duty consider the legality or illegality of a contract against the boni mores. It is so that in this matter, the Applicants have not raised the point that the contract/s are contrary to public policy or against good morals. This court must therefore determine whether it is open to it to consider the issue. In my view, it would be remiss of this court to disregard the impact of the contract/s on public policy, simply because it was not raised in these papers. In *Morley, supra*, Binns-Ward J reaffirmed the duty of the court to mero motu raise the illegality of the contract, as was set out in *Ryland v Edros* 1997 (2) SA 690 (C) at 710 A-B, as follows:

“ . . . I say this because of the fact that the plaintiff has not contended that the contract was illegal and a Court’s duty to invoke mero motu the illegality of the contract only exists in my view in cases where the enforcement of a contract presently unenforceable because is contrary to public policy or contra bonos mores is sought.”

Similarly, in *Yannakou v Apollo Club* 1974 (1) SA 614 (A), at 623 G-H, the court said the following:

“And if his defence is illegality, which does not appear ex facie the transaction sued on but arises from its surrounding circumstances, such illegality and the circumstances founding it must be pleaded. It is true that it is the duty of the court to take the point of illegality mero motu, even if the defendant does not plead or raise it; but it can and will only do so if the illegality appears ex facie the transaction or from the evidence before it, and, in the latter event, if it is also satisfied that all the necessary and relevant facts are before it.”

[21] It is my judgment that it would be a travesty of justice if this court were, in the circumstances prevailing in the matter at hand, to fail to consider the issue of the legality of the agreements. It matters not that it was raised by the Applicants during argument, as this court is, in any event, enjoined to mero motu raise it. As such, I now proceed to consider whether the contract/s between the parties were contrary to public policy.

Is the contract contrary to public policy?

[22] It is now settled law that courts are empowered to declare contracts, or contractual terms, entered into freely and voluntarily, unenforceable if they are found to be against public policy. The approach to be adopted in an enquiry of this nature is set out in *Eastwood v Shepstone* 1902 TS 294, at 302, where the court stated that:

“ . . . this Court has the power to treat as void and to refuse in any way to recognise contracts and transactions, which are against public policy or contrary to good morals. It is a power not be hastily or rashly exercised; but when once it is clear that any arrangement is against public policy, the Court would be wanting in its duty if it hesitated to declare such an arrangement void. What we have to look to is the tendency of the proposed transaction, not its actually proved result.”

This principle is restated in *Sasfin (Pty) Ltd v Beukes* 1989 (1) SA (A), at 9B-C, as follows:

“No court should therefore shrink from the duty of declaring a contract contrary to public policy when the occasion so demands. The

power to declare contracts contrary to public policy should, however, be exercised sparingly and only in the clearest of cases, lest uncertainty as to the validity of contracts result from an arbitrary and indiscriminate use of the power. One must be careful not to conclude that a contract is contrary to public policy merely because its terms (or some of them) offend one’s individual sense of propriety and fairness.”

Finally, in *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323 CC, at 333-334, the court explained that whether or not a term in a contract is contrary to public policy, must be determined by having regard to the Bill of Rights and the values that underpin our constitutional democracy as expressed in the Constitution. It said:

“[29] . . . Thus a term in contract that is inimical to the values enshrined in our Constitution is contrary to public policy and is, therefore, unenforceable.

[30] In my view the proper approach to the constitutional challenges to contractual terms is to determine whether the term challenged is contrary to public policy as evidenced by the constitutional values, in particular, those found in the Bill of Rights. This approach leaves space for the doctrine of *pacta sunt servanda* to operate, but at the same time allows courts to decline to enforce contractual terms that are in conflict with the constitutional values even though the parties may have consented to them. . .”

At para 73 it continued:

“[73] Public policy imports the notions of fairness, justice and reasonableness. Public policy would preclude the enforcement of a contractual term if its enforcement would be unjust or unfair. Public policy, it should be recalled, ‘is the general sense of justice of the community, the boni mores, manifested in public opinion’. . .” (Footnote omitted.)

[23] The facts of the matter at hand exhibit features which, when cumulatively considered, show a probability that unconscionable, immoral or illegal conduct will result from the implementation of the provisions of the contract according to their tenor. (See *Juglal NO and Another v Shoprite Checkers (Pty) Ltd t/a OK Franchise Division* 2004 (5) SA 248 (SCA) at 258 para 12.)

[24] Although I have found that the contracts do not appear to be fraudulent, their intrinsic unconscionableness shows that they are against public policy. The facts establish that the Applicants contracted with the main intention of saving their home from foreclosure. Furthermore, it is undisputed that the Applicants were in a vulnerable and unenviable financial position, severely compromised by their inability to secure further credit. Certain features of the agreements clearly show unconscientious exploitation of the applicant’s dire financial circumstances. This I say because, first, it is inconceivable how the Applicants accepted the terms outlined in the affidavit wherein they authorised MD Mitchell Inc., to distribute the proceeds of the purchase price without the amounts being included. Therein,

the Applicants agreed to disbursements that do not make sense as no amounts are reflected, neither is there an indication of how each debt shall be proved. These range from professional fees/agents commission, all legal costs, bond cancellation costs, consultant fee to obtain clearance figures from the Municipality, taxes, levies as well as FICA fees. The terms outlined above are clearly oppressive to the borrowers, as they would not be able to determine the authenticity of the actual amounts paid out of the proceeds of the sale of their home. Furthermore, the terms of the lease agreement are clear that should the Applicants breach the terms, the agreement would be cancelled and they would remain without a roof over their heads, notwithstanding the fact that an amount of R400 000.00 had already been secured as pre-paid rental. Second, it is not apparent from these papers that the Applicants were alive to the fact that their failure to pay rent was inextricably linked to Wonderful Choice's servicing of its bond. This knowledge is pivotal, as their defaulting on the monthly rental would lead to the very result the Applicants sought to avoid from the outset, i.e. losing their home. Third, it is very unlikely on the facts in casu, that the Applicants would be able to secure a bond, after seven years, to repurchase their home, given that they are already on record as having defaulted on their bond repayments. A conclusion that the real nature, or rather the underhand nature, of the agreements has been cleverly concealed, is inescapable. This is compounded by the fact that even the lease agreement also does not reflect the name of the lessor. Neither does it reflect the date on which the transaction was entered into. It is also telling that the First and Second Respondents have not opposed this application. In my view, based on what I have alluded to above, the Applicants could not have intended to transfer the property in these circumstances. I therefore declare the terms of the scheme and the pursuant agreements between the Applicants and the First and Second Respondents as being

contrary to public policy, and the contracts void ab initio.

[25] It will be recalled that the Respondents allege that the transaction between the Applicants and Wonderful Choice is voidable and as such, based on the abstract, as opposed to causal theory of transfer, the Respondents acquired good title to the property. I have found that the Applicants established on these papers that they did not intend the permanent transfer of ownership of their property to Wonderful Choice. I deem it unnecessary therefore to consider the voidability of the contract, given that I have already made a finding to the effect that there is a defect in the agreements of sale and lease and that they both are void ab initio.

[26] I now turn to consider the question of costs.

Costs

[27] It remains to be said that the Third and Fourth Respondents bemoaned the fact that the Applicants failed to take timeous action to vindicate their property. Indeed it is so that the Applicants were advised by Venn & Muller attorneys as early as 7 October 2015 that Edenglo failed to make payments of the monthly rental to Wonderful Choice. It does not appear that the Applicants, once they had obtained that knowledge, took any steps to claim the property.

Similarly, when they discovered that the Edenglo scheme was a scam, they did nothing. It is only when the Third and Fourth Respondents brought eviction proceedings that the present application was brought. The Applicants have not taken the court into their confidence, as they have failed to advance tangible reasons why they delayed taking the necessary action, thereby, according to the Third and Fourth Respondents, acquiescing to the terms of the agreement that eventually resulted in their losing the property. It will be recalled that Sher J, had already issued an eviction order against the Applicants, which was stayed pending the determination of this matter. The Applicants were, prior to the issuing of the eviction order, afforded, through court orders,

two opportunities to pursue the present application and they failed. Not only that, they also failed to file a replying affidavit,

notwithstanding the fact that the Third and Fourth Respondents had specifically addressed their failure to bring the present application

timeously. Furthermore, the practice note and setting down of the matter was done by the Respondents. Although they have made out a case for the declaration of invalidity of the agreements, the manner in which they conducted themselves by delaying the proceedings leaves much to be desired. This is particularly so because the delay must have given the Third and Fourth Respondents the impression over the years that their title to the property is unassailable. Whereas costs normally follow the result, I am of the view that in the present matter, each party must pay its own costs.

[28] With regard to wasted costs relating to the postponements on 13 October 2017, 1 November 2017, 24 November 2017, 29 January 2018 and 15 May 2018, the parties did not address same in their Heads of Argument, neither did they call for a determination relating to the aforesaid dates. It would therefore be negligent to make orders without affording the parties an opportunity to address the court on whether or not they are still pursuing those costs.

[29] In the light of the findings I have made, the following order will issue:

1. It is declared that the transaction constituted by the deed of sale and lease executed by the Applicants and the Second and/ or Seventh Respondents on an unknown date is contrary to public policy.
2. It is further declared that the sale and transfer of the immovable property, known as Erf [...], Brackenfell, situated at [...] K Street, Protea Heights, Brackenfell, Western Cape from the Applicants to Wonderful Choice Investments (Pty) Ltd, and the subsequent transfer to Minerva Merissa Baugaard and Ian William Baugaard (the Third and Fourth Respondents) is hereby cancelled.
3. The Registrar of Deeds is directed to give effect to this declaration, as contemplated in section 6 of the Deeds Registries Act 47 of 1937.
4. Each party is ordered to pay its own costs.

NDITA, J

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