

SOUTH AFRICA / JUDGMENT

Du Toit and Another v Minister of Land Affairs/Rural Development and Land Reform and Others (LCC60/2010, LCC61/2010, LCC62/2010) [2011] ZALCC 21 (16 June 2011)

[2011] ZALCC 21

COURT

Land Claims Court

BEFORE

J.M. Mpshe

CASE / FILE NUMBER

LCC60/2010, LCC61/2010, LCC62/2010

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE LAND CLAIMS COURT OF
SOUTH AFRICA
HELD IN RANDBURG
CASE NO: LCC60,61,62/2010
Decided on: 16 June 2011

In the matter between:

DANIEL

JOHANNES DU TOIT

.....1st

Applicant

ELIZABETH CHRISTINA

MAGRITHA DU

TOIT

.....2

nd

Applicant

and

MINISTER

OF LAND AFFAIRS/RURAL

DEVELOPMENT

AND LAND REFORM

.....1st

Respondent

THE

DIRECTOR GENERAL OF THE DEPARTMENT

OF

RURAL DEVELOPMENT AND LAND REFORM

.....2nd
 Respondent
 THE CHIEF
 LAND CLAIMS COMMISSIONER
3rd
 Respondent
 THE
 REGIONAL LAND CLAIMS COMMISSIONER LIMPOPO
4th
 Respondent
 BELA-BEAL COMMUNAL PROPERTY
 ASSOCIATION
 (Registration no. CPA/034/A)
5th
 Respondent

JUDGMENT

MPSHE AJ:

- [1] This is an application to enforce an agreement entered into between the applicants and the first to fourth respondent. It pertains to property owned by applicants and to be sold to first to fourth respondents in the interest of the fifth respondent. Three separate applications were launched with separate applicants but same respondents. The evidence in all three applications is identical. I deal with all three in this judgment.
- [2] LCC 60/2010 APPLICANTS: Daniel JohannesDuToit Elizabeth Christinah Magritha Du Toit. PROPERTY: Portion 22 of the farm Rietspruit 527 Waterberg District, Limpopo Province.
- [3] LCC 61/2010 APPLICANTS: Matthews Gerhardus Beukes Dareen Beukes PROPERTY: Portion 14 and 24 of the farm Rietspruit 527, Waterberg District, Limpopo Province.
- [4] LCC 62/2010 APPLICANTS: Nicholaas Johannes Gerhardus Van Coller. PROPERTY: Portion 20 & 21 of the farm Rietspruit 527, Waterberg District, Limpopo Province.
- [5] The prayers to the Notice of Motion reads as follows:
 - 1) An order declaring that the Agreement of Sale annexed to the 4th Respondent's answering affidavit and which was signed by the parties on or about November 2008, which agreement was approved by the 1st Respondent in March 2009 is the agreement entered into by the parties on or about November 2008, that the terms and conditions therein are the terms and conditions that the parties agreed on and that it agreement between the parties;
 - 2) Ordering the 1st Respondent to re-sign the Agreement of Sale (annexed to the answering affidavit) within 14 (fourteen) days from date of this order and to submit it to the Applicants' Attorney of record, Lourens Attorneys; 3) Authorizing the sheriff of the above Honourable Court, in the event of the 1st and/or 4th Respondent failing to sign the deed of sale referred

to in paragraph 1 supra within the time period allowed, to sign the Agreement of Sale on behalf of the 1st and/or 4th Respondent and who's signature thereto shall have the same effect as if signed by the 1st and/or 4th Respondent;

- 4) Directing the 1st to 4th Respondents to pay the amount of R401 186.00 (Four Hundred and One Thousand One Hundred and Eighty Six Rand) being 50% of the purchase price for Portion 22 of the farm Rietspruit 527 KQ, Waterberg District, Limpopo Province ("the property") to the conveyancing attorneys, Lourens Attorneys, within 14 (fourteen) days from date of this order;
- 5) Directing the 1st to 4th Respondents, through a duly authorized agent to sign all transfer documents or any other documents reasonably necessary, which shall give effect to the transfer of the property, within a period of 7 (seven) days after written request from the appointed attorneys, Lourens Attorneys, to do so; 6) Authorising the sheriff of the above Honourable Court, in the event of the 1st to 4th Respondents or either of them failing to sign the documents referred to in paragraph 4 supra within the time period allowed, to sign all such documents on behalf of the 1st to 4th Respondents or either of them, who's signature thereto shall have the same effect as if signed by the 1st to 4th Respondents or either of them;
- 7) That the 1st to 4th Respondents be ordered to provide the conveyancing attorneys within 7 (seven) days after complying with prayer 3 supra and at the request of the conveyancing attorneys, with a written undertaking (Annexure "A" to Annexure "DTI") in terms of which payment of the balance of the purchase price is guaranteed;
- 8) That the 1st to 4th Respondents are jointly ordered and directed to instruct the conveyancing attorneys, Lourens Attorneys, within 5 (five) days after complying with prayer 6 supra, to lodge the registration papers for purposes of effecting the transfer of the Applicants' property onto the name of the 5th Respondent, failing which, the said conveyancer is hereby authorized to lodge the registration papers;
- 9) That the 1st to 4th Respondents are jointly ordered and directed to pay the balance of the purchase price to the conveyancing attorney within 7 (seven) days after date of transfer of the said property onto the name of the 5th Respondent;
- 10) That the Department of Land Affairs, represented by the 1st to 4th Respondents are ordered to pay interest at the rate of 15,5% per annum as damages to the Applicants on the amount of R802 372.00 and calculated from 1 April 2009 or any other date determined by the Honourable Court to date of payment of the balance of the purchase price;
- 11) That the 1st to 4th Respondents are jointly and severally ordered to pay the Applicants' costs of this application on attorney and client scale;
- 12) That no cost order be granted against the 5th Respondent, save in the event of the 5th Respondent opposing the relief sought in this Notice of Motion, as amended; and

13) Further and/or alternative relief.

[6] On the 25 January 2011 being the date of trial, parties reached an agreement and settled prayers 1 to 9 of the Notice of Motion.

Prayers 10 to 11 were postponed sine die.

[7] On the 13 April 2011 parties made submissions on damages by way of interest at the legal rate of 15.5% and costs. Damages

[8] Ms. Inge Oschman for all applicants submitted that the court is to grant damages on mora ex re. alternatively mora ex persona and second alternative that respondents were placed in mora when main application was launched.

[9] Our law has crystallized on mora ex re and mora ex persona. In the case of C & T Products (Pty) Ltd vM.H Goldschmist (Pty) Ltd¹ the following was said: "Mora is a wrongful delay or default in making payment, and arises the moment the debtor becomes obliged to pay. The obligation to pay interest on the amount owing likewise arises from the moment the debtor is in mora. Mora is generally divided into two categories, ie mora ex persona and mora ex re. Mora ex persona arises out of the conduct of the debtor and occurs when due demand {interpellation) has been upon the debtor, who has failed to satisfy such demand. Mora ex re, on the other hand, arises out of the transaction itself and is not dependent upon prior demand. This occurs, for example, where the date for payment is fixed by agreement between the parties."

[10] It is our law that the debtor may be put in mora by mere service of summons² in the absence of a letter of demand.

[11] In the present case there is an agreement entered into by the parties. This agreement is binding on all parties. The issue of interest and damages is provided for in the contract. It thus makes the date of mora determinable. I find mora ex persona not applicable in casu.

[12] The applicants' founding affidavit is to the effect that the contract was entered into on the 31 March 2009. However, the signed contract is said to have been lost by the fourth respondent. It was then that on the 25 January 2011 the agreement was that parties will re-sign the contract.

[13] On the strength of this "re-signing" Mr Malowa for fourth respondent argues that there was no agreement signed on the 31 March 2009 and that the date of agreement is to be determined as at 25 January 2011.

[14] This submission by Mr Malowa disputes the fact that a valid contract was entered into on the 31 March 2009 due to lack of signature by the fourth respondent.

- [15] The coming into being of an agreement is dependent on compliance with formalities. There should be an offer and acceptance thereof. The acceptance must be communicated to the offeree. In casu these two requirements had been satisfied. This is sale of land and the statutory requirements are to be met as well. The agreement has been reduced to writing, and the applicants signed the agreement as intention to accept the offer. The said agreement was then forwarded to the fourth respondent for signature and implementation.
- [16] Unfortunately, fourth respondent lost the document. There is no evidence as to whether the agreement was lost by fourth respondent before or after the signature of the fourth respondent. I do not intend dealing with this issue of fourth respondent's signature or otherwise for reasons as hereunder. [17] As indicated supra, the parties settled on the 25 January 2011. As a result thereof an order of court ensued reading as follows: "1. An order declaring that the Agreement of Sale annexed to the 4th Respondent's answering affidavit and which was signed by the Applicants on or about November 2008, which agreement was approved by the 1st Respondent in March 2009 is the agreement entered into by the parties on or about November 2008, that the terms and conditions contained therein are the terms and conditions that the parties agreed on and that it is the existing Agreement between the parties."
- [18] It is clear that parties have now agreed that agreement was entered into on the 31 March 2009 and parties agreed "that the terms and conditions that the parties agreed on and that it is the existing Agreement between the parties." On the basis of this order I come to the conclusion that the agreement was signed on the 31 March 2009.
- [19] The "re-signing" did not conclude a new agreement but simply formalised that which was agreed upon on the 31 March 2009.
- [20] The agreement of Sale provides that 50% of the purchase price shall be paid by the purchaser within 30 days of signature. The agreement was entered into on the 31 March 2009. The 50% thus became due on the 1 May
2009. The said deposit was instead paid on the 3 February 2011 almost 20 months later.
- [21] The remaining 50% was paid on the 8 March 2011 almost 8 days after registration which took place on the 3 March 2011.
- [22] It is my opinion that fourth respondent was in mora for a period of twenty months and is therefore liable to the applicants. COSTS
- [23] It is the practice of this court that costs orders should be granted only if circumstances justify the same. I agree that the applicants had no option but to launch these applications in order to reach finality. That respondents particularly fourth respondent, authorized payment on the date of hearing of the applications. However, for a court to order punitive costs the elements of mala-fide has to be established. Fourth respondent did not effect payment as per agreement. The reason for this non-performance is ascribed to lack of funds. The lack of funds cannot be found to be mala-fide justifying punitive costs. Having

considered all evidence I herein make the following order:

- a) Fourth respondents is to pay applicants in LCC61/2010 and LCC62/2010 damages by way of interest at the legal rate of 15.5%.
- b) The first to fourth respondents herein to pay the costs of this application on a party and party scale jointly and severally. J.M. MPSHE ACTING JUDGE

JUDGMENT

MPSHE AJ:

[1] This is an application to enforce an agreement entered into between the applicants and the first to fourth respondent. It pertains to property owned by applicants and to be sold to first to fourth respondents in the interest of the fifth respondent. Three separate applications were launched with separate applicants but same respondents. The evidence in all three applications is identical. I deal with all three in this judgment.

[2] LCC 60/2010

APPLICANTS: Daniel JohannesDuToit

Elizabeth Christinah Magritha Du Toit.

PROPERTY: Portion 22 of the farm Rietspruit 527 Waterberg District, Limpopo Province.

[3] LCC 61/2010

APPLICANTS: Matthews Gerhardus Beukes Dareen Beukes

PROPERTY: Portion 14 and 24 of the farm Rietspruit 527, Waterberg District, Limpopo Province.

[4] LCC 62/2010

APPLICANTS: Nicholaas Johannes Gerhardus Van Coller.

PROPERTY: Portion 20 & 21 of the farm Rietspruit 527, Waterberg District, Limpopo Province.

[5] The prayers to the Notice of Motion reads as follows:

- 1) An order declaring that the Agreement of Sale annexed to the 4th Respondent's answering affidavit and which was signed by the parties on or about November 2008, which agreement was approved by the 1st Respondent in March 2009 is the agreement entered into by the parties on or about November 2008, that the terms and conditions therein are the terms and conditions that the parties agreed on and that it agreement between the parties;
- 2) Ordering the 1st Respondent to re-sign the Agreement of Sale (annexed to the answering affidavit) within 14 (fourteen) days from date of this order and to submit it to the Applicants' Attorney of record, Lourens Attorneys;

- 3) Authorizing the sheriff of the above Honourable Court, in the event of the 1st and/or 4th Respondent failing to sign the deed of sale referred to in paragraph 1 supra within the time period allowed, to sign the Agreement of Sale on behalf of the 1st and/or 4th Respondent and who's signature thereto shall have the same effect as if signed by the 1st and/or 4th Respondent;
- 4) Directing the 1st to 4th Respondents to pay the amount of R401 186.00 (Four Hundred and One Thousand One Hundred and Eighty Six Rand) being 50% of the purchase price for Portion 22 of the farm Rietspruit 527 KQ, Waterberg District, Limpopo Province ("the property") to the conveyancing attorneys, Lourens Attorneys, within 14 (fourteen) days from date of this order;
- 5) Directing the 1st to 4th Respondents, through a duly authorized agent to sign all transfer documents or any other documents reasonably necessary, which shall give effect to the transfer of the property, within a period of 7 (seven) days after written request from the appointed attorneys, Lourens Attorneys, to do so;
- 6) Authorising the sheriff of the above Honourable Court, in the event of the 1st to 4th Respondents or either of them failing to sign the documents referred to in paragraph 4 supra within the time period allowed, to sign all such documents on behalf of the 1st to 4th Respondents or either of them, who's signature thereto shall have the same effect as if signed by the 1st to 4th Respondents or either of them;
- 7) That the 1st to 4th Respondents be ordered to provide the conveyancing attorneys within 7 (seven) days after complying with prayer 3 supra and at the request of the conveyancing attorneys, with a written undertaking (Annexure "A" to Annexure "DTI") in terms of which payment of the balance of the purchase price is guaranteed;
- 8) That the 1st to 4th Respondents are jointly ordered and directed to instruct the conveyancing attorneys, Lourens Attorneys, within 5 (five) days after complying with prayer 6 supra, to lodge the registration papers for purposes of effecting the transfer of the Applicants' property onto the name of the 5th Respondent, failing which, the said conveyancer is hereby authorized to lodge the registration papers;
- 9) That the 1st to 4th Respondents are jointly ordered and directed to pay the balance of the purchase price to the conveyancing attorney within 7 (seven) days after date of transfer of the said property onto the name of the 5th Respondent;
- 10) That the Department of Land Affairs, represented by the 1st to 4th Respondents are ordered to pay interest at the rate of 15,5% per annum as damages to the Applicants on the amount of R802 372.00 and calculated from 1 April 2009 or any other date determined by the Honourable Court to date of payment of the balance of the purchase price;
- 11) That the 1st to 4th Respondents are jointly and severally ordered to pay the Applicants' costs of this application on attorney and client scale;

- [12] That no cost order be granted against the 5th Respondent, save in the event of the 5th Respondent opposing the relief sought in this Notice of Motion, as amended; and
- [13] Further and/or alternative relief.
- [6] On the 25 January 2011 being the date of trial, parties reached an agreement and settled prayers 1 to 9 of the Notice of Motion.

Prayers 10 to 11 were postponed sine die.

- [7] On the 13 April 2011 parties made submissions on damages by way of interest at the legal rate of 15.5% and costs.

Damages

- [8] Ms. Inge Oschman for all applicants submitted that the court is to grant damages on mora ex re. alternatively mora ex persona and second alternative that respondents were placed in mora when main application was launched.
- [9] Our law has crystallized on mora ex re and mora ex persona. In the case of C & T Products (Pty) Ltd vM.H Goldschmist (Pty) Ltd¹ the following was said:

"Mora is a wrongful delay or default in making payment, and arises the moment the debtor becomes obliged to pay. The obligation to pay interest on the amount owing likewise arises from the moment the debtor is in mora. Mora is generally divided into two categories, ie mora ex persona and mora ex re. Mora ex persona arises out of the conduct of the debtor and occurs when due demand {interpellation} has been upon the debtor, who has failed to satisfy such demand. Mora ex re, on the other hand, arises out of the transaction itself and is not dependent upon prior demand. This occurs, for example, where the date for payment is fixed by agreement between the parties."

- [10] It is our law that the debtor may be put in mora by mere service of summons² in the absence of a letter of demand.
- [11] In the present case there is an agreement entered into by the parties. This agreement is binding on all parties. The issue of interest and damages is provided for in the contract.

It thus makes the date of mora determinable. I find mora ex persona not applicable in casu.

- [12] The applicants' founding affidavit is to the effect that the contract was entered into on the 31 March 2009. However, the signed contract is said to have been lost by the fourth respondent. It was then that on the 25 January 2011 the agreement was that parties will re-sign the contract.
- [13] On the strength of this "re-signing" Mr Malowa for fourth respondent argues that there was no agreement signed on the 31 March 2009 and that the date of agreement is to be determined as at 25 January 2011.

- [14] This submission by Mr Malowa disputes the fact that a valid contract was entered into on the 31 March 2009 due to lack of signature by the fourth respondent.
- [15] The coming into being of an agreement is dependent on compliance with formalities. There should be an offer and acceptance thereof. The acceptance must be communicated to the offeree. In casu these two requirements had been satisfied. This is sale of land and the statutory requirements are to be met as well. The agreement has been reduced to writing, and the applicants signed the agreement as intention to accept the offer. The said agreement was then forwarded to the fourth respondent for signature and implementation.
- [16] Unfortunately, fourth respondent lost the document. There is no evidence as to whether the agreement was lost by fourth respondent before or after the signature of the fourth respondent. I do not intend dealing with this issue of fourth respondent's signature or otherwise for reasons as hereunder.
- [17] As indicated supra, the parties settled on the 25 January 2011. As a result thereof an order of court ensued reading as follows:
- "1. An order declaring that the Agreement of Sale annexed to the 4th Respondent's answering affidavit and which was signed by the Applicants on or about November 2008, which agreement was approved by the 1st Respondent in March 2009 is the agreement entered into by the parties on or about November 2008, that the terms and conditions contained therein are the terms and conditions that the parties agreed on and that it is the existing Agreement between the parties."
- [18] It is clear that parties have now agreed that agreement was entered into on the 31 March 2009 and parties agreed "that the terms and conditions that the parties agreed on and that it is the existing Agreement between the parties." On the basis of this order I come to the conclusion that the agreement was signed on the 31 March 2009.
- [19] The "re-signing" did not conclude a new agreement but simply formalised that which was agreed upon on the 31 March 2009.
- [20] The agreement of Sale provides that 50% of the purchase price shall be paid by the purchaser within 30 days of signature. The agreement was entered into on the 31 March 2009. The 50% thus became due on the 1 May 2009. The said deposit was instead paid on the 3 February 2011 almost 20 months later.
- [21] The remaining 50% was paid on the 8 March 2011 almost 8 days after registration which took place on the 3 March 2011.
- [22] It is my opinion that fourth respondent was in mora for a period of twenty months and is therefore liable to the applicants.

COSTS

[23] It is the practice of this court that costs orders should be granted only if circumstances justify the same. I agree that the applicants had no option but to launch these applications in order to reach finality. That respondents particularly fourth respondent, authorized payment on the date of hearing of the applications. However, for a court to order punitive costs the elements of mala-fide has to be established. Fourth respondent did not effect payment as per agreement. The reason for this non-performance is ascribed to lack of funds. The lack of funds cannot be found to be mala-fide justifying punitive costs.

Having considered all evidence I herein make the following order:

- a) Fourth respondents is to pay applicants in LCC61/2010 and LCC62/2010 damages by way of interest at the legal rate of 15.5%.
- b) The first to fourth respondents herein to pay the costs of this application on a party and party scale jointly and severally.

J.M. MPSHE

ACTING JUDGE

1 1981

(3) SA 619 (K) at 631 G-H WEST RAND ESTATE LTD V NEW ZEALAND INS CO LA 1926 AD 173 at 195-196

2Du Toit v Standard General Insurance Co (Pty) Ltd 1994 (1) SA 682 (W) Thoroughbred Breeder's Association v Price Waterhouse 2001 (4) 1 SA 551 (SCA) at 594 F/G 595 A West Rand Estate Ltd v N.Zealand Insurance 1926 A.D 173 at 182 - 3.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCC/2011/21.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/du-toit-and-another-v-minister-unknown-topic-alcc-2011>

Prepared on 11 October 2026 · Esheria