

SOUTH AFRICA / JUDGMENT

Sampson v Cape Town Community Housing Company (Pty) Ltd (NCT/1487/2011/115 (1)(P)) [2012] ZANCT 7 (18 April 2012)

[2012] ZANCT 7

COURT

National Consumer Tribunal

BEFORE

Diane Terblanche, Tanya Woker, Joseph M. Maseko

CASE / FILE NUMBER

NCT/1487/2011/115 (1)(P)

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THE NATIONAL CONSUMER TRIBUNAL

HELD IN CAPE TOWN

CASE

No: NCT/1487/2011/115 (1)(P)

In

the matter between:

LA
SAMPSON.....APPLICANT
and
CAPE TOWN COMMUNITY
HOUSING
COMPANY
(PROPRIETARY) LTDRESPONDENT

CORAM:

Ms. Diane Terblanche
(Presiding)
Prof. Tanya Woker
(Member)
Prof. Joseph M. Maseko
(Member)
Date of Hearing: 9
March 2012
Date
of Delivery: 18 April 2012

JUDGMENT**THE PARTIES**

The Applicant in this matter is Mr LA Sampson. At the hearing Mr Sampson represented himself.

The Respondent in this matter is Cape Town Community Housing Company (Proprietary). The Respondent was represented by Mr Werner Jurgens, its Financial Manager.

THE APPLICATION

This is an application in terms of section 115 (1) of the National Credit Act, Act 34 of 2005 (the NCA) to the Tribunal to resolve a disputed entry shown on an account, alternatively a dispute concerning a statement of account.

JURISDICTIONAL PRE-REQUISITES

It is a jurisdictional pre-requisite that the consumer (Applicant in this instance) should have unsuccessfully attempted to resolve his dispute directly with the credit provider or through alternative dispute resolution before approaching the Tribunal to resolve the dispute.

The parties have a long and acrimonious history that commenced shortly after the Applicant purchased certain immovable property from the Respondent in terms of an instalment sale agreement (IPA) in 2001.

Applicant alleged that he has unsuccessfully attempted to resolve the disputed entry directly with the credit provider and through alternate dispute resolution.

It is common cause that the Applicant engaged numerous mechanisms and alternate dispute resolution agents, including Black Sash, certain debt counsellors and the Credit Ombudsman, in his attempts to resolve his dispute with Respondent. This dispute has not been resolved and the Applicant now approaches the Tribunal in terms of section 115.

ISSUE TO BE DECIDED

The issue to be decided, according to the Applicant, is for this Tribunal to resolve a dispute concerning the statement the

Respondent provided to him in 2010 which states as follows:¹

A balance of R39,450.98 as at 28 February 2010;

No charge of interest since February 2010;

A sum of R4,982.57 as damages for unlawful occupation;

A charge of R 133.64 for a letter of demand;

A charge of R38,110.70 for legal fees;

A sum of R18,400.00 allegedly forfeited by Applicant from an erstwhile subsidy; and

A resultant settlement balance of R101,077.89 as at the end of May 2010.

The Applicant disputes this settlement statement. The details of the dispute regarding this statement will emerge from the discussion of the facts as set out below.

JURISDICTION OF THE TRIBUNAL

10. This Tribunal is a creature of statute so it may adjudicate only on matters specifically provided for in its founding legislation and any other applicable Act², which in this instance is primarily the NCA. The effective date on which the Act came into operation was 1 June 2006 and the Act makes provision for the regulation of matters relating to credit agreements. Item 4(1) of Schedule 3 of the Act provides situations

in which the NCA may apply to credit agreements which predated its application.

11. Section 8(1)(b) of the NCA provides that an agreement constitutes a credit agreement in terms of the Act if it is a credit transaction as described in section 8(4). Section 8 (4)(c) provides that an instalment agreement is a credit transaction. This Tribunal interprets these provisions to mean that instalment sale agreements are credit agreements governed by the NCA.

The Applicant has applied to the Tribunal for the Tribunal to resolve his dispute as provided for in section 115 (1) of the NCA.

Sections 115 (1) and (2) of the NCA provides that:

“(1) A consumer who has unsuccessfully attempted to resolve a disputed entry directly with the credit provider in terms of section 111, and through alternative dispute resolution under Part A of Chapter 7, may apply to the Tribunal to resolve:

- (a) A disputed entry shown on a statement of account; or
 - (b) A dispute concerning a statement of the settlement amount.
- (2) If the Tribunal is satisfied that an entry, or the settlement amount, as shown on a statement is in error, the Tribunal may determine the matters in dispute and may make any appropriate order to correct the statement that gave rise to the dispute.”

Item 4 in Schedule 3 of the NCA provides that section 115 will apply to pre-existing credit agreements from the effective date.

Before the Tribunal can make an order in this matter it must be satisfied that the matter relates to a statement of account that applies to a credit agreement. Therefore the Tribunal must establish that:

The parties entered into a valid credit agreement to which the Act applies; and

The dispute relates to a statement of account relevant to that credit agreement.

BACKGROUND

Both parties made oral submissions stating their cases.

It is common cause between the parties that they concluded an instalment purchase agreement (IPA) in 2001 for the purchase of certain immovable property situated at 12 Newton Rd, Woodridge, Mitchells Plain.³ This agreement indicates that the purchaser was the Applicant and his marital status is indicated as “Single but Habitually

Cohabiting”. His partner at the time, Serene Christine Dalwai, appears under the heading spouse and it is evident from the IPA that she signs every page of the IPA although the document does not indicate that she was a purchaser. However, it seems from the evidence presented to the Tribunal that it was intended that she should be a joint purchaser with the Applicant. (This fact was not disputed by the Respondent).

The IPA provided that the balance of the purchase price was R25 805.87 and that the purchaser would pay a monthly instalment of R698.14. The balance of the purchase price of the property together with interest would be repaid over a minimum period of 48 months.⁴ The IPA, which also provided for the payment of interest on the outstanding balance, reads in part as follows:⁵

“(1) The balance of the purchase price from time to time outstanding shall bear interest at a rate of 6 (six) percentage points above the prime overdraft rate per annum from time to time charged by the seller’s banker (or any of them) on overdraft facilities to their most favoured corporate clients from time to time. A certificate signed by any manager of the said bankers (whose authority and/or appointment it shall not be necessary to prove) shall be prima facie proof of such prime overdraft rate.

Such interest shall be –

Calculated from the occupation date until the last day of the month during which the occupation date occurs and thereafter monthly in advance on the first day or each and very successive month;

Capitalised immediately when it is calculated; and

Paid as part of the instalments.”

It was also common cause that the Applicant fell into arrears with his monthly instalments almost immediately after concluding the IPA. The statement of accounts indicates that Applicant paid R697.00 in March 2001 and made no further payments in 2001.⁶ On 9 November 2001 the IPA between the Applicant and the Respondent was cancelled because of the outstanding amounts which the Applicant owed to the Respondent. At the end of 2001 the statement of accounts (marked annexure F) indicates that the amount which the Applicant owed the Respondent had increased to R30,341.48.⁷

On 24 March 2004 the Respondent obtained an eviction order in the Mitchell's Plain Magistrate's Court against the

Applicant.⁸ However, the Applicant was not evicted by the sheriff of the court because the parties entered into a settlement agreement in an attempt to resolve the matter.

As part of the settlement agreement a number of different documents were concluded by the parties.⁹ On 10 December 2004 the parties signed a Deed of Assignment¹⁰ as well as a Memorandum of Agreement.¹¹ In the Deed of Assignment it was agreed that the Applicant and his former partner, would assign the purchase sale agreement to the Applicant who would then become the sole purchaser of the property. This assignment was done with the consent of the Respondent. The Deed of Assignment was signed by Respondent, the Applicant and Serene Dalwai (as assignors) and the Applicant (as the Assignee) and refers to the IPA concluded and executed by the Respondent, Lesten Andre Sampson and Serene Dalwai (former purchasers) on 25 February 2001.

In terms of this Deed of Assignment the Applicant and his former partner agreed to assign all their rights, title and interest under and in terms of the IPA to the Applicant on condition that the Applicant took over and assumed all of the Applicant and his former partner's liabilities and obligations under the IPA.¹² The Applicant agreed to accept the assignment of these rights and undertook to assume all the Assignor's (the Applicant and his former partner) liabilities and obligations under the IPA.¹³ He also agreed with the Respondent that he (Applicant) would carry out and perform all the terms, conditions, stipulations and

covenants contained in the IPA and agreed that these would be binding on him just as if he had originally entered into this agreement.¹⁴ The Respondent agreed that it would accept the Applicant in substitution for the Assignor as purchaser under the IPA. In terms

of the Deed of Assignment therefore the Applicant would then simply continue with the original contract and would owe all outstanding

amounts including outstanding interest.

The Memorandum of Agreement, signed on the same day as the Deed of Assignment was entered into between the Respondent and Ms Dalwai (as the first purchaser) and the Applicant (as the second purchaser). The Memorandum of Agreement provided for the cancellation of the sale agreement concluded on 25 February 2001 between the Respondent and Ms Dalwai as first purchaser. It also stated that the Applicant (as second purchaser) would conclude a new sale agreement with the Respondent and that the property is "hereby sold by the seller (Respondent) to the Second Purchaser (Applicant) upon the terms and conditions set out in the Deed of Sale hereto market "A" and signed by the seller and second purchaser (Applicant)."

The Applicant signed the new sale agreement on 13 December 2004.¹⁵ This sale agreement was identical to the original sale agreement except that it had the Applicant's name as the purchaser and indicated that he was married in community of property to one, Catherine Ann Sampson. Clause 3 of this document provided -

the purchase price (total consideration) as being R44,206.20;

24.2 a subsidy amount of R18,400.00;

24.3 a Top-up by the local authority of R0.00;

24.4 a balance of the purchase price being R25,806.20;

24.5 the due date for first instalment being 01/03/2001 (emphasis added);

24.6 the due date for final instalment 31/01/2006;

24.7 the due date for payment of instalment as being the last day of each month;

24.8 the contract term of the agreement as being 60 months; and

24.9 the date of occupation of the property as being 25/02/2001.

This sale agreement appears to have been signed by the Applicant's wife but there is only one witness to this signature. The Applicant and his wife are, according to the Applicant, married in community of property.

Although this sale agreement concluded on 13 December 2004 appears to be a new sale agreement, it is in fact referring (or resuscitating) to the position as it was in 2001. And the statement of accounts simply carries on with the account as if this was a continuation of the original IPA concluded on 25 February 2001. In December 2004 the Applicant paid R5,000 and the statement of account indicates that he owed the Respondent R39,237.03. The Applicant continued to make payments to the Respondent but not necessarily every month but not enough to cover the monthly instalment on the outstanding balance, especially taking into consideration the arrears from

2001. So although the Applicant continued to make payments, his debt to the Respondent was in fact increasing. In April 2008 the statement of accounts reflect that R28,384.67 in interest is reversed because of the in duplum rule. However, despite this reversal the Applicant still owed the Respondent R34,923.48. From August 2008 the amounts paid by the Applicant were substantially reduced (and were not paid every month). These payments were insufficient to cover the monthly

instalments. As a result, the outstanding debt continued to increase instead of reduce.

On 28 January 2010 the Respondent via its attorneys (Fairbridges) sent a letter to the Applicant informing him that he was in arrears in the amount of R5,694.21 as of 28 January 2010.¹⁶ The letter advised the Applicant to remedy the breach failing which the Respondent would take legal action against Applicant for his ejectment and the repossession of the property. The Respondent also advised that the Applicant should consult a debt counsellor in terms of section 129(1) of the NCA.

On 15 March 2010 the Respondent sent another letter to the Applicant via its attorneys (Fairbridges). In this letter Respondent was informing the Applicant that the IPA entered into on 1 March 2001 was cancelled.¹⁷ The Respondent further informed the Applicant that he was regarded as an unlawful occupant (of the property in question) and that he should vacate the premises within 30 days.

At the end of February 2010, the Applicant's IPA account with the Respondent was closed and it reflected a "nil" balance. A new account which was referred to as a "Damages Account" was then opened by the Respondent on 1 March 2010.¹⁸ Every month R1,200 as "damages for unlawful occupation" was added to this account by Respondent. On 25 October 2010 the sum of R42,909.60 was added to this account because of legal fees which the Respondent had incurred as a result of litigating against the Applicant. Interest was also charged on the outstanding amounts and any payments made by the Applicant were credited to this account.¹⁹

In 2011, the Applicant entered into an agreement in terms of which he undertook to sell the house to an unnamed third party. He (Applicant) then approached the Respondent in this regard. The Respondent stated that it would agree to the sale taking place

provided the Applicant paid what was referred to as a settlement figure of R101,077.89. This figure was informed by details as set out in Annexure A. The Applicant was informed that if he wanted to sell the house he would first have to pay this settlement figure to the Respondent. The house would then be transferred into his name to enable him to sell the house to the new buyer(s). It is this settlement figure which is the subject of this application.

THE APPLICANT'S CASE

The Applicant informed the Tribunal that he had been receiving conflicting statements from the Respondent and that they seemed to fluctuate without explanation. He also informed the Tribunal that he had wanted to sell his property in 2009 and when he approached the Respondent, a figure of R73,000 was suggested. He argued that he could not have owed this amount because the purchase price of the property was R25,000 and he had already paid in the region of R30,000 in repayments.²⁰ The Respondent explained to him that this was for damages and attorneys fees which he disputed. He then received the settlement

document from Mr Jurgens which is marked annexure A and which was for a substantially increased amount.

The Applicant argued that in terms of section 27 of the Alienation of Land Act he is entitled to have the property registered in his name because he has already paid off more than half the purchase price.²¹ He also argued that he did not owe legal fees because there has been no costs order against him²² and that the subsidy should not be revoked because it was granted to him by the Province and not to the Respondent. He argued that the Respondent had cancelled the original IPA but it did not cancel the deed of assignment or the memorandum of agreement which was entered into in 2004. However, he also argued that this agreement is illegal because his wife did not agree to this and they are married in community of property. Finally the prayers of the Applicant were that this Tribunal should order that:

He had a nil balance as far as his debt to the Respondent is concerned; and

That the property in question should be transferred into his name.

THE RESPONDENT'S CASE

In its replying affidavit the Respondent argued that there is no credit agreement in place because the credit agreement was cancelled in 2001 and the National Credit Act does not apply because it was not operative at that time.

Mr Jurgens, on behalf of the Applicant, explained that the amount outstanding or owing by the Applicant was calculated from the original date of February 2001. He explained that the outstanding balance did not fluctuate as argued by the Applicant and stated that:

"It has got an opening balance that reduces when payment is made that increases for the instalment, levy and the interest ... it gets bigger when there is no payments because there is interest on the account and when there is a payment on the account it reduces".²³

Mr Jurgens explained that after the sale was cancelled²⁴, there was no longer a contract between the parties and the house was regarded as stock which the Respondent could now sell. The Applicant was informed that he was in unlawful occupation of the house. The Applicant then informed the Respondent that he had concluded a deed of sale and wanted to sell the house. Although there was no agreement in place, the Respondent decided that if it could recoup what had been lost over the years it would transfer the property to the Applicant so that the Applicant could then resell the house. Mr Jurgens further stated that the house had not been transferred into the name of the Applicant because the full balance of the purchase price had not been paid. In order to arrive at a suitable settlement figure (which it seems was in fact a purchase price for the house) the Respondent took into consideration the legal fees it had paid over the years to defend the various actions against it instituted by the Applicant. The Respondent had also taken into account the outstanding balance which was owed by the Applicant when the agreement was cancelled and a figure for damages for unlawful occupation. Mr Jurgens explained that the Respondent was of the view that for a three bedroomed house of the nature in which the Applicant was living, a reasonable monthly rental was approximately R1,200 per month. Therefore the Respondent added R1,200 per month to the amount which it calculated it was owed by the Applicant. In 2010 when Annexure A was given to the Applicant this total was the

R101,077.89 – hence this proposed settlement figure then.

In summary therefore Mr Jurgens explained that if the Applicant had paid this amount to the Respondent, the Respondent would have been prepared to transfer the property into the name of the Applicant, to enable the Applicant to sell the property to the new purchasers for R285,000. At the time, Mr Jurgens stated, the Respondent was of the view that the property was valued at R230,000.

ASSESSMENT OF THE EVIDENCE

At the outset it was stated that before the Tribunal can make an order in this matter it must be satisfied that the matter relates to a statement of account which applies to a credit agreement governed by the Act. Therefore the Tribunal must establish that:

37.1 The parties entered into a credit agreement to which the Act applies; and

37.2 The dispute relates to a statement of account relevant to that credit agreement.

It is common cause that the original agreement was entered into in 2001 and that this agreement was cancelled at the end of 2001. At this particular point in time the Act did not apply. However, the Applicant was not evicted from the property and continued to remain in possession of the property despite the fact that virtually no monthly instalments were paid.

It is also common cause that the Respondent intended to evict the Applicant in 2004 but that this eviction did not take place because a new agreement or new agreements were purportedly concluded between the parties.

This is definitely where matters become extremely murky. The Respondent argues that a new agreement was concluded at the time because there was an assignment of the old agreement, which in fact had been cancelled in 2001.

The Respondent argues that the original agreement was cancelled in 2001 hence at the time of this hearing; there was no agreement between the parties. The Respondent further averred that there was no credit agreement in place and the Tribunal therefore has no jurisdiction to hear the matter.

The difficulty is in establishing exactly what happened in 2004. Was there a new agreement between the parties, which commenced anew from 2004, or was the old agreement assigned to the Applicant so that all the old responsibilities remained? The difficulty is that this agreement which the parties purported to assign had in fact been cancelled in 2001 and that on 13 December 2004 the Applicant purported to enter into a new agreement despite the fact that on 10 December 2004 he had entered into a Deed of Assignment which purported to transfer all rights and duties of the original (2001) agreement to him.

It must be noted that even where a contract has been cancelled, the parties may agree to revive the existing contract. Christie in *Law of Contract in South Africa*²⁵ states that a party who has cancelled a contract may revive that contract but such revival needs the agreement of both parties “so whether one talks about the cancelled contract being revived or being replaced by a new contract does not matter”. The necessary agreement may be express or tacit or result from quasi-mutual assent.

The matter is further complicated by the fact that the Applicant and his wife are married in community of property. Whilst both spouses to a marriage in community of property have full capacity to perform juristic acts with regard to the joint estate a spouse must obtain the consent of the other spouse before performing certain acts.²⁶ In terms of section 15 (2) (read with section 15 (5)) of the Matrimonial Property Act, 1984 a spouse cannot without the formal consent of the other spouse buy residential land on instalments in terms of a contract falling under the provisions of the Alienation of Land Act, 1981.²⁷ Formal consent means that the spouse must give written consent and that two witnesses must attest to that written consent. In principle, a contract is void if it is made without the requisite consent.

Taking all these factors into consideration, as well as the document which the parties have submitted to the Tribunal, it appears that the parties may have intended that the original agreement, concluded in 2001 be revived (it must be noted that the new sale agreement signed by the Applicant on 13 December 2004 refers to the start date of this agreement as being 25 February 2001). The intention seems to have been that the Applicant was now the purchaser of the property whereas before the Applicant and his ex-partner had been the purchasers. This was certainly the intention of the deed of assignment. The signing of the sale agreement on 13 December 2004 may have been to ensure that the sale complies with the requirements of the Alienation of Land Act 68 of 1981 which requires that sales of land be in writing and signed by the parties.²⁸ However, it may well be that this 2004 contract is invalid because the Applicant's wife's²⁹ consent to the agreement was not attested to by two witnesses as required in terms of sections 15(2)(f) and (g) and section 15(5) of the Matrimonial Property Act, Act 88 of 1984 as amended.

Despite the difficulties which the Tribunal has in establishing whether a valid contract was entered into or revived in 2004 and even if the Tribunal assumes that there was a valid IPA in place in 2004, it is clear that this IPA was subsequently cancelled. On 28 January 2010, the Respondent informed the Applicant, via its attorneys (Fairbridges) that he was in arrears with his monthly instalments in the amount of R5,594.21³⁰ and he was informed that he should advise them of a proposal for settling the arrears. The Applicant did not settle the arrears and so on 15 March 2010 the Respondent (via its attorneys) sent a further letter to the Applicant in which it cancelled the agreement.³¹

From this it can be concluded that either there is no valid IPA in place because it was cancelled in 2001 and a new agreement was not properly concluded or a valid IPA between the Respondent and the Applicant was in existence in 2004 but this was cancelled on 15 March 2010.

However, it has been held in a number of cases that when parties revive a contract, even where the terms ought to be in writing by law, such revival need not be in writing if the parties are reviving the same contract – *Neethling v Klopper* 1967 (4) SA 459 (A) at 465; *Benkenstein v Neisius* 1997 (4) SA 835 (C); and *Ferreira v SAPDC (Trading) Ltd* 1983 (1) SA 235 (A). But then in this case, no revival of the old contract can be implied since any revival would have had to be between the initial parties. And clearly, from the provisions of section 15 (2) (read with section 15 (5)) of the Matrimonial Property Act, 1984 a spouse cannot without the formal consent of the other spouse buy residential land on instalments in terms of a contract. This, therefore, means that the revival would not have been between the initial parties, as it would have revived after the Applicant had married his wife. And the wife will not have been part of the old contract to be revived if at all.

CONCLUSION

An evaluation of the settlement document marked annexure A as well as the evidence presented relating to this document indicates that this document is not a statement of account relating to a credit agreement. The document outlines those factors which the Respondent has taken into consideration in order to arrive at the purchase price for the house occupied by the Applicant and when this document was issued, there was no credit agreement between the parties. The credit agreement was either, cancelled in 2001 and it was not revived or it was revived but was void because the Applicant's wife's signature was not witnessed by two competent witnesses or it was revived and it was not void but it was cancelled in 2010.

As this matter does not involve a statement of account which relates to a credit transaction, the Tribunal has no jurisdiction to deal with the matter.

ORDER OF THE TRIBUNAL

The Application is dismissed and no order is made as to costs.

[signed]

PROF T. WOKER

MEMBER

MS. DIANE TERBLANCHE, PRESIDING MEMBER AND PROF. J.M. MASEKO, MEMBER
CONCURRING.

1 This statement was handed to the Tribunal by the Applicant and is marked Annexure A.

2 The Consumer Protection Act No. 68 of 2008 and Provincial Consumer Laws are examples.

3 The IPA was attached to the Respondent's answering affidavit and is marked WJ1. The document is undated but it appears from the evidence that this document was concluded on 25 February 2001. The Deed of Assignment concluded in 2004 (discussed below) states that the IPA was concluded on 25 February 2001.

4 Clause 4 of the IPA. In his evidence Mr Jurgens explained that the reason why there was a minimum period was to prevent people who had been the recipients of government subsidies from selling their properties too quickly after receiving the government subsidy.

5 Clause 5 of the IPA.

6 See statement of account handed to the Tribunal marked Annexure F.

7 In January 2002 the statement of accounts indicate that the Applicant paid R2 800, 00 to the Respondent and his outstanding balance was reduced to 28 038.38. No further payments were made until December 2004.

8 The eviction order was attached as WJ3 to the Respondent's answering affidavit.

9 The relationship between the Applicant and Serene Dalwai had ended and the Applicant had married someone else.

10 The Deed of Assignment was handed to the Tribunal at the hearing by the Applicant and is marked Annexure "C".

11 The Memorandum of Agreement was handed to the Tribunal at the hearing by the Applicant and is marked Annexure "D".

12 Clause 1 of the Deed of Assignment

13 Clause 2 of the Deed of Assignment.

14 Clause 2 of the Deed of Assignment.

15 This document has handed to the Tribunal at the hearing by the applicant and is marked Annexure J.

16 Letter was handed to the Tribunal and is marked Annexure H. It also formed part of the Respondent's replying affidavit.

17 Letter handed to the Tribunal marked Annexure I.

18 This document was handed to the Tribunal and is marked Annexure G.

19 The Applicant paid the Respondent the following amounts: 16 March 2010 R360,00; 17 May 2010 R400; 25 June 2010 R350.

20 See page 5 lines 5-10 of the transcript.

21 Section 27 of the Alienation of Land Act provides that any purchaser who in terms of a deed of alienation has undertaken to pay the purchase price of land in specified instalments over a period in the future and who has paid to the seller in such instalments not less than 50 per cent of the purchase price, shall, if the land is registrable, be entitled to demand from the seller transfer of the land on condition that simultaneously with the registration of the transfer there shall be registered in favour of the seller a first mortgage bond over the land to secure the balance of the purchase price and interest in terms of the deed of alienation. The contract accepts that the

purchaser may exercise his rights in terms of this section (see clause 4.6.4 of the IPA).

22 See page 25 of the transcript.

23 Page 33 of the record

24 The exact date of this cancellation is problematic and this is discussed below under Assessment of the Evidence

25 6th edition (2011) at 461

26 Section 15 (1) of the Matrimonial Property Act 1984

27 As indicated above, this is a transaction governed by the Alienation of Property Act.

28 See section 2 (1) of the Act. IPAs are governed by Chapter 2 of the Act. See also Sewpersadh v Dookie 2009 (6) 611.

29 Applicant and his wife got married in community of property on 27 March 2003

30 See Annexure H. In terms of section 19 of the Alienation of Land Act, no seller may take action against a purchaser by reason of breach of contract unless the seller has notified the purchaser by letter of the breach of contract and had made demand to the purchaser to rectify the breach and the purchaser has failed to comply with the demand. The seller must give the purchaser at least 30 days to rectify the breach and must inform the purchaser of the steps which he will take in the event that the breach is not rectified.

31 See Annexure I.

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