

SOUTH AFRICA / JUDGMENT

Sibiya N.O v Chabango and Others (75040/2015) [2020] ZAGPPHC 488 (28 August 2020)

[2020] ZAGPPHC 488

COURT

North Gauteng High Court, Pretoria

BEFORE

Madiba SS

CASE / FILE NUMBER

75040/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION PRETORIA

CASE

NO: 75040/2015

In

the matter between:

NOMATHEMBA
YVONNE SIBIYA N.O
APPLICANT
and
THOKOZILE CHABANGO
1ST RESPONDENT
CITY
OF TSHWANE MUNICIPALITY
2ND
RESPONDENT
THE REGISTRAR OF DEEDS
THE DIRECTOR-GENERAL OF
HUMAN SETTLEMENTS
THE MASTER OF THE HIGH
COURT
JAN CHABANGO
RIRHANDZU OSHLER ZWANE
MXOLISI JOSEPH ZWANE
FIRST
RAND BANK LIMITED

3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT
9TH
RESPONDENT

JUDGMENT

INTRODUCTION

- [1] The applicant launched an application in which she is seeking relief in the following terms: -
- a) Ordering that the sale of transfer of the immovable property Erf 2376 Mamelodi West Pretoria from the first and sixth respondents to the seventh and eighth respondents is cancelled;
 - b) Ordering that the third respondent expunge the transfer and registration of the immovable property situated at Erf 2376 Mamelodi West Pretoria in favour of the seventh and eighth respondents from the Deeds Registry;
 - c) An order that the immovable property Erf 2376 Mamelodi West Pretoria be declared an asset in the deceased estate of the late Joyce Fihliwe Sibiya, Estate no: 001982 / 2017;
 - d) Costs of suit;
 - e) Further and alternative relief.
- [2] The first, sixth, seventh and eighth respondents oppose the application and pray for its dismissal with costs. No opposition was filed and served by the second to fifth respondents.
- [3] An application for joinder of First Rand Bank Limited as the ninth respondent was launched by the applicant. The applicant seeks a costs order only in the event the application is opposed.
- [4] The first respondent intends to make an application for condonation for the late filing of her heads of argument. No costs are sought by the first respondent but will seek costs order in the event of any of the parties opposing.

FACTUAL MATRIX

- [5] Joyce Fihliwe Sibiya (deceased) instituted an application to set aside the sale and registration of Erf 2376 Section H Mamelodi West Pretoria to the first respondent. It is alleged that Erf 2376 Section H Mamelodi West Pretoria belonged to Jeremia Magagula who was married to Zodwa Judith Magagula. The applicant Joyce Fihliwe Sibiya is said to be the daughter of Zodwa Judith Magagula. Both Jeremia Magagula and Zodwa Judith Magagula passed away.

Jeremia Magagula allegedly bequeathed his estate to Zodwa Judith Magagula who is the mother to Joyce Fihliwe Sibiya, the applicant in the main application. Joyce Fihliwe Sibiya also passed on before the finalization of application she launched.

[6] Nomathemba Sibiya approaches the court in casu as the Executrix of the late Joyce Fihliwe Sibiya's estate. The applicant in casu, therefore substituted Joyce Fihliwe Sibiya. A joinder application by the applicant (in casu) to join the fifth, sixth,

seventh and eighth respondents was granted by the Court in earlier proceedings. The first, sixth, seventh and eighth respondents

raised a point in limine challenging the first respondent's capacity to launch this application.

ISSUES TO BE DETERMINED

[7] The following issues are to be determined by the court:

Whether the applicant has the necessary locus standi.

Whether the sale and transfer of Erf 2376 Section H Mamelodi West Pretoria by the first and sixth respondents to the seventh and eighth respondents should be cancelled.

Whether the registration of Erf 2376 Mamelodi West, Pretoria be expunged from the Deeds Registry.

Whether Erf 2376 Section H Mamelodi West be declared an asset of the late Joyce Fihliwe Sibiya.

[8] I deal first with the interlocutory applications in this matter namely: -

- i) Joinder application;
- ii) Application for condonation
- iii) Late filing of first Respondent's answering affidavit

JOINDER APPLICATION

[9] The applicant seeks an order to join First Rand Bank Limited as the ninth respondent in these proceedings.

[10] The seventh and eighth respondents purchased the immovable property situated at 2376 Mamelodi West from the first and sixth respondents. A mortgage bond was registered in favour First Rand Bank Limited over Erf 2376 Mamelodi West.

[11] The applicant contends that First Rand Bank Limited is an interested party in this application. She submits that no prejudice will be suffered by First Rank Bank Limited in case it is joined as the ninth respondent. She further submits that there was no confirmatory affidavit by the seventh and eighth respondents to support their contention that there is a mortgage bond registered in favour of First Rand Bank Limited. No opposition was filed by any of the respondents.

[12] It is trite law that a third party should be joined in a matter if it appears that the third party has a direct and substantial interest in the subject matter. In *Amalgamated Engineering Union V. Minister of Labour*[1] the court held that a third party who may have a direct and substantial interest in any order the court might make in proceedings

or if such an order cannot be substantiated or carried into effect without prejudicing that party, is a necessary party and should be joined in the proceedings.[2]

[13] The test is whether the party that is alleged to be a necessary party for a purpose of joinder had a legal interest in the subject matter of litigation which may be affected prejudicially by the judgment of the court in the proceedings concerned.[3]

[14] Indeed, First Rand Bank Limited has a substantial interest in this matter as a mortgage holder. Any order made in this application as prayed for has a potential of prejudice to the First Rand Bank Limited. I am therefore satisfied that a case for a joinder has been made.

[15] Accordingly, the following order is made: -

That First Rand Bank Limited be and is hereby joined as the ninth respondent in these proceedings.

No order as to costs.

CONDONATION APPLICATION

[16] The first respondent's Practice note and heads of argument were filed outside the time lines as prescribed in the Practice Directives of this Honourable Court.

[17] The non-compliance with the said Practice Directives is alleged to be as a result of the following: -

i) Mr. Nkala employed by University of Pretoria was assigned to deal with this matter. His contract was terminated before he could file the heads of argument and Practice notes.

ii) Mr. Oosthuizen who then was seized with the matter could not proceed as there was no counsel from the pro bono desk who could assist as per the arrangement to comply with the Practice Directives.

iii) The Covid-19 pandemic also contributed to the delay.

[18] It is contended by the first respondent that the applicant will suffer no prejudice. There was sufficient time between the filing and hearing of the application for the heads of argument and Practice Note to be considered. His prospects of success are great as its averments are further complimented and supported by the seventh and eighth respondents. The application for condonation is not opposed.

[19] A court may condone non-compliance of the Rules where an applicant demonstrates that a valid and justifiable reason exists why non-compliance should be condoned. An applicant is to furnish an explanation of his default sufficiently fully to enable the court to understand how it really came about and to assess his conduct and motives.[4] The burden lies with the applicant to prove good cause for the relief it seeks. What is apparent from the applicant's explanation is that she did not approach this matter in a tardy manner.

[20] The first respondent has for all intents and purposes the intention to file her heads of argument and Practice Notes as it appears from below:-

After the termination of Mr. Nkala's employment, she repeatedly approached the pro bono office for assistance to no avail. The applicant's attorneys (in the main application) of record were contacted regarding the situation the first respondent was encountering. The extent of the delay is not such that it will cause great prejudice to the applicant in the main application.

[21] It is my view that the first respondent's explanation is bona fide to warrant condonation for the late filing of her practice note and heads of argument. If condonation is not granted, it will result in great prejudice to first respondent whereas the applicant will suffer no prejudice. This is so as the applicant did not deem it necessary to oppose this application. The applicant has made out a case for condonation relief she seeks.

[22] I therefore make the following order: -

- 1) Application for condonation is hereby granted.
- 2) No order as to costs.

LATE FILING OF FIRST RESPONDENT'S ANSWERING AFFIDAVIT

[23] It is the applicant's contention that the first respondent's answering affidavit is not properly before the court. The reason thereof is that first respondent's answering affidavit was delivered ten months out of the prescribed period. No explanation and reasons have been furnished by the first respondent nor did she apply for condonation for her conduct.

[24] The applicant's further submission is that her conduct is prejudicial to her and other occupants of Erf 2376 Mamelodi West. The only inference to be drawn is that first respondent acted mala fide. It is the applicant's contention that the first respondent's answering affidavit should not be considered herein.

[25] The first respondent submitted that neither the deceased Joyce Fihliwe Sibiya applicant in the main application nor the applicant did raise the issue of non-compliance with the rules by the first respondent's late filing of her answering affidavit.

[26] An option available to the applicant was to invoke the provisions of Rule 30 of the Uniform Rules of Court but she failed to do so. It is contended by the first respondent that the applicant failed to make out a case for the rejection of the first respondent's answering affidavit. Rule 30A provides that where a party fails to comply with Rules of the court, an

application for an order directing the defaulting party to comply with such rule, notice or request can be launched. In the event the defaulting party failing to comply, an order can be made by the court as it deems fit under the circumstances.

[27] It is indeed so that the applicant only raised the issue of non-compliance with the rules by the first respondent in her heads of

argument. The parties are not allowed to rely on a dispute not raised in their initial affidavits or pleadings. It is for the parties to identify a dispute and for the court to make a determination on that particular dispute.[5]

[28] In this instance, the applicant failed to comply with the Rules of the court for non-compliance and falls foul of introducing her dispute only in her heads of argument. In the circumstances, the first respondent's answering affidavit should be allowed to stand.

[29] Subsequently the following order is made.

The first respondent's answering affidavit is admitted in these proceedings.

No order as to costs.

LOCUS STANDI

[30] The first respondent raised a point in limine that the applicant lacks the necessary capacity in this application. It was also contended by the first respondent that the applicant (Joyce Fihliwe Sibiya) in the main application did not have the locus standi to have brought that application. The first respondent contends that the applicant failed to prove her locus standi in Joyce Fihliwe Sibiya's estate.

[31] The applicant's failure to join other members of her family as occupiers of the disputed immovable property in this matter, does not afford her the capacity to act as they (occupiers) may seek to claim in their own rights in terms of Conversion of Certain Rights to Leasehold Act.

[32] Although the seventh and eighth respondents did not specifically raise locus standi as a point in limine, they did however refer to applicant's lack of capacity to institute this application in their papers.

[33] Regarding the attack on the applicant and Joyce Fihliwe Sibiya, the applicant in the main application, the applicant in casu, contends that: -

- i) That Joyce Sibiya had locus standi in the main application by virtue of her being a beneficiary to the estate of her late mother Zodwa Magagula who was married to Jeremia Magagula.
- ii) Her submission is that Joyce Sibiya had a direct interest in the estate of Jeremia Magagula.

iii) Similarly, as descendant of Joyce Sibiya (applicant in the main application) applicant in this matter has direct interest entitling her to seek a relief from the court.

[34] It is the application's submission that the late Joyce Sibiya's locus standi cannot be determined in isolation and further the following should be considered: -

i) The history of the matter in question, the impact of Conversion of Certain Rights to Leasehold Act and Upgrading of Land Tenure Act 112 of 1991 on the transfer and registration of the disputed property herein should be considered.

ii) A letter from the Pretoria North Magistrate Court confirms that Zodwa Judith Magagula was an heir to the late Jeremia Magagula's estate.

iii) She further submits that a note from the Transvaal provincial Administration made a determination in favour of Jeremia Magagula as the owner of Erf 2376 Mamelodi West. Jeremia Magagula and his family and later on, his descendants including the applicant and her siblings, occupied the immovable property in dispute for decades and as such applicant's capacity to act cannot be questioned.

iv) The fact that the first respondent failed to deliver her answering affidavit to the applicant's amended papers is proof that applicant has locus standi in this application.

THE LEGAL PRINCIPLES THAT FINDS APPLICATION

[35] In determining whether a party in a matter has capacity to do so, a consideration should be on whether the party is enforcing a legal right and has sufficient interest to do so.[6]

[36] The requirements of locus standi in judicio are generally the following: -

i) A party for relief must have sufficient interest in the subject matter.

ii) The interest must not be too far removed.

iii) The interest must be actual, not abstract or academic.

iv) The interest must be a current interest and not a hypothetical one.

[37] The party alleging that it has locus standi to institute proceeding bears the onus to prove that indeed it can do so. The applicant approaches this court in her official capacity as an Executrix of the late Joyce Fihliwe Sibiya. Her standing is disputed. In order for the applicant to be regarded as an Executrix compliance with the Administration of Estates Act 66 of 1965 is to be adhered to.

[38] The Master of the High Court will issue letters of Executorship once all the reporting documents are in order. These documents include: the original will, if there is one, death notice, death certificate, a preliminary inventory, nomination in favour of the executor / executrix, acceptance of trust as executor / executrix, certified copy of executor / executrix's identity document and a bond of security if required.

- [39] Section 1 of Act 66 of 1965 defines letters of Executorship as including any document issued or a copy of any such document duly certified by any competent public authority in any state by which any person named or designated therein is authorized to act as the personal representative of any deceased person or as executor of the estate of any person. For the applicant to act as an executrix she must be issued with letters of executorship by the Master of the High Court or by any competent public authority in the state duly authorized to do so.
- [40] The applicant is in possession of a document titled undertaking and acceptance of Master's Direction by the Executrix. She avers that this document authorizes her to act as the executrix in this matter.
- [41] It follows that the undertaking and acceptance of the Master's direction produced by the applicant as envisaged in Section 1 of Act 66 of 1965 is not a letter of authority.
- [42] The undertaking and acceptance of the master's direction is one of the documents the applicant was supposed to submit to the master of the High Court or to any competent person duly authorized to issue it so that the letters of Executorship can be issued.

SECTION 18.3 OF ACT 66 OF 1965

- [43] The Master of the High Court may dispense with the appointment of an executor / executrix and its procedures where the gross assets in an estate are below the level as determined by the Minister of Justice. Presently the gross assets should not exceed R250 000.00. The amount determined in the gross assets in the past was R125 000.00. In the above instance, letters of authority will be issued. This is a simple method of administration of deceased estate. A person issued with Letters of Authority will administer the assets of deceased as listed on therein, that is, pay the debts and distribute the balance to the beneficiaries and heirs.
- [44] It is apparent from this application that the applicant was neither issued nor authorized to administer the deceased's estate (estate of the late Joyce Sibiya) in terms of Section 18.3 of Act 66 of 1965. The applicant therefore did not act in terms of any statutory requirements. During the hearing of this matter, the applicant conceded that no letters of executorship were issued to her authorizing her to act as such in the estate of the late Joyce Fihliwe Sibiya. She further conceded that she cannot be regarded as an executrix in this matter.
- [45] I therefore hold that the applicant did not have an authority to act as an executrix in this matter in terms of the provisions of Section 1 of Act 66 of 1965. The applicant submitted further that she is actually approaching this court on the basis that she together with her family members and siblings have been occupying Erf 2376 Mamelodi West for decades. As such, she has a substantial interest in this matter and therefore has a standing to seek a relief sought.
- [46] She contended that she has a right to access the court as her rights together with her family members to housing are seriously infringed. It is her contention that since Jeremia Magagula was married to Zodwa Judith Magagula in community of property, Joyce Sibiya as

a biological daughter of Zodwa Judith Magagula has a locus standi as a beneficiary to the estate of her mother Judith Magagula. The house in dispute formed the asset of Jeremia Magagula as determined by the Pretoria North Magistrate Court. The applicant's view is therefore that, Joyce Sibiya had a substantial interest in the said house.

- [47] The real issue without doubt in this matter is the ownership of an immovable property, Erf 2376 Mamelodi West. It is appropriate to interrogate the question of ownership of this house. The applicant alleges that the Pretoria North Magistrate Court and Director General of the Transvaal confirmed that ownership of Erf 2376 Mamelodi West vests in the estate of the late Jeremia Magagula.

That the first respondent obtained ownership of Erf 2376 Mamelodi West through misrepresentation and transferred it to the seventh and eighth respondents. It is argued by the applicant that the first respondent failed to inform the other occupiers of the disputed property that she has sold the house.

- [48] The very same house in dispute has been transferred and registered in the name of Thokozile Chabango (the first Respondent) by Deeds of Transfer T 05035451 in terms of the Conversion of Certain Rights into Leasehold or ownership Act 81 of 1988.
- [49] The immovable property has to be transferred and registered by the Registrar of Deeds who will issue a deed of transfer or title deed confirming ownership thereof. The confirmation letters from the Pretoria North Magistrate's Court and the Director General of the Transvaal determination has in my view no force and effect to the transfer of Erf 2376 Mamelodi West. It is apparent that Erf 2376 Mamelodi West was at no stage registered in the names of the late Jeremia Magagula, Zodwa Judith Magagula and Joyce Fihliwe Sibiya except being occupiers of the said house.
- [50] Despite the fact that Zodwa Judith Magagula was married to the late Jeremia Magagula thus becoming a beneficiary and heir in his estate, the disputed house however does not form part and parcel of the estate of Jeremia Magagula as he was not the owner thereof. Accordingly, Zodwa Judith Magagula cannot claim ownership thereof as well.
- [51] By extension, the averment by the applicant that the disputed property is an asset of the late Joyce Sibiya cannot be sustained. The applicant has failed to provide any documentary prove to support her submission relating to the ownership of Erf 2376 Mamelodi West to either Jeremia Magagula, Zodwa Judith Magagula or Joyce Fihliwe Sibiya.
- [52] The contention that their occupation of Erf 2376 Mamelodi West without it being registered by the Registry of Deeds in either Jeremia Magagula, Zodwa Judith Magagula and Joyce Fihliwe Sibiya's names stands to be dismissed.

- [53] The letters of confirmation from the Pretoria North and the Director General of Human Settlement did not therefore grant ownership to Joyce Fihliwe Sibiya and her beneficiaries including the applicant in this matter. The applicant's standing based on ownership of Erf 2376 Mamelodi West is rejected.
- [54] The transfer and registration of Erf 2376 Mamelodi West to the first respondent according to the available documentary evidence cannot be faltered and it is valid as there is no contrary prove indicating otherwise. The notion that the first respondent obtained Erf 2376 Mamelodi West through misrepresentation and did not inform its occupants of the sale thereof cannot in my view be taken as a factor granting the applicant capacity to launch this application.
- [55] The applicant submitted that failure by the first respondent to deliver her answering affidavit to the applicant's amended papers means the averments contained therein are accepted. The point in limine raised by the first respondent should therefore be dismissed solely on this point. The averment raised has become moot as the first respondent's answering affidavit was admitted on record disputing the applicant's averments.
- [56] It is argued by the applicant that her interest in this matter is not only actual, but current and not too far removed. She bases these assertions on the following: -
- i) That the first respondent's sale of Erf 2376 Mamelodi West to the seventh and eighth respondents was mala fide and a result of a misrepresentation by the first respondent.
 - ii) She failed to inform Joyce Sibiya and other occupants of the disputed house that it has been sold.
 - iii) Joyce Sibiya and other occupants of Erf 2376 Mamelodi West occupied it for decades and that pensioners and children are residing therein.
 - iv) That the first respondent's title of ownership of Erf 2376 Mamelodi West is tainted.
- [57] The applicant contented that she therefore has locus standi in this matter due to the first respondent's mala fide and misrepresentation.
- [58] It is the first respondent's submission that Jeremia Magagula could never had bequeathed the said house to Zodwa Judith Magagula as an asset forming part of his estate because the disputed house never belonged to Jeremia Magagula.
- [59] From the reading of the documents in this application, it transpired that Erf 2376 Mamelodi West belonged to the City of Tshwane Municipality, the second respondent in this matter. As aforementioned, the house was ultimately transferred and registered in the names of the first respondent.
- [60] It is stretching it too far to even suggest that due to Jeremia Magagula having been married to Zodwa Judith Magagula who happened to be Joyce Sibiya's mother, therefore the inheritance of the said house by Joyce Sibiya through intestate succession established Joyce Sibiya's interest in the disputed property, consequently Joyce Sibiya and the Applicant have

capacity to seek the relief they seek. My view is that the alleged interest by Joyce Sibiya an applicant is too far removed. Jeremia Magagula could not transfer more rights than those vested in him.

- [61] Under the circumstances, I hold that Erf 2376 Mamelodi West could never have vested in Joyce Sibiya and as such the applicant's interest in the disputed property is not current.
- [62] The applicant's contention that Joyce Sibiya's entitlement to the said house is based on the fact that her mother Zodwa Judith Magagula is the sole heir of Jeremia Magagula and therefore a beneficiary to the disputed property, her interest has been established as it is an asset of her inheritance, cannot be correct as already highlighted above. My view is that applicant's claim based on the Joyce Sibiya's inheritance to Erf 2376 Mamelodi West is abstract and hypothetical. The disputed house never formed part of the assets of Joyce Sibiya and accordingly the applicant's claim in Erf 2376 Mamelodi West based on Joyce Sibiya's inheritance of the house is non-existent and falls to be rejected
- [63] The seventh and eighth respondents were later joined in this application. They have been joined because the first respondent sold Erf 2376 Mamelodi West to them. The seventh and eighth respondents submitted that they are the registered owners of the disputed property and they caused a mortgage bond to be registered over Erf 2376 Mamelodi West after the first respondent sold it to them. They contended that the applicant's locus standi is unfounded as it is based on a document titled undertaking and acceptance of the Master's direction by the executrix which does not constitute a formal letter of appointment.
- [64] The applicant deposed to her affidavit as a duly appointed executrix in the estate of the late Joyce Sibiya contrary to the statutory requirements as prescribed in the Administration of the Estate Act 66 of 1965. It is apparent from the applicant's founding affidavit and subsequent papers before the court, that she is basing her standing in her capacity as an executrix in the estate of Joyce Sibiya. She contended that Joyce Sibiya as the sole beneficiary and heir to the estate of Zodwa Judith Magagula, entitles Joyce Sibiya to be the owner of Erf 2376 Mamelodi West as it forms part of the assets of the late Joyce Sibiya.
- [65] The applicant did not allege or submit that she has any other sufficient interest in this application except Joyce Sibiya's entitlement to the disputed property in her founding affidavit. Her reliance on common law requirements for her locus standi in this application only emerged in her heads of argument. It is trite law in application proceedings that the notice of motion and affidavits define the issues between the parties and the affidavits embody evidence.
- [66] In *Naidoo and Another v Sunker and Others*[7] the court held that: -
- "If an issue is not cognizable or derivable from these sources, there is little or no*
- scope for reliance on it. It is a fundamental rule of fair civil proceedings that parties... should be apprised of the case which they are required to meet, one of

the manifestations of the rule is that he who [assets] ... must ... formulate his case sufficiently clearly so as to indicate what he is relying on.”

[67] The applicant’s founding affidavit makes no mention of common law requirements submitted in her heads of arguments. I find that the applicant cannot be allowed to rely on her standing not established in her founding affidavit. It is therefore impermissible for the applicant to rely on the common law grounds for locus standi in this application.

[68] A finding has been made in this application that the applicant in any event failed to make a case for her standing based on common law requirements in this matter. As aforementioned the applicant cannot be regarded as an executrix in the estate of Joyce Sibiya as she failed to satisfy the statutory requirements as prescribed in Act 66 of 1965.

[69] It is quite disturbing that the applicant had to acknowledge and concede that she is in fact not an executrix in this application during the hearing of this matter. Her later submission that she derives her capacity in this application from her occupation of Erf 2376 Mamelodi West has to be rejected. Suffice to mention that occupation of an immovable property does not necessarily grants rights of ownership to the occupiers.

[70] One wonders whether the applicant can be regarded as misleading the Court in this instance or not. In any event the onus rests on the applicant to establish her locus standi in this matter. It is for her to allege and prove that she has capacity to act.[8] I find that the applicant has failed to establish her standing in this application.

COSTS

[71] The issue of whether to award costs is premised on two basic rules namely: -

- i) That the award of costs is a matter of a judicial discretion by the court;
- ii) That the successful party should as a general rule be awarded;

It will therefore be just and fair to order that the costs be awarded to the first, seven and eight respondents;

ORDER

[72] I therefore make the following order:

That the point in limine is hereby upheld.

That the applicant is ordered to pay the costs to the first, seventh and eighth respondents.

MADIBA SS

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Appearances:

Applicant’s Counsel

: Advocate MK Steenekamp

Applicant's Attorneys

: Legal Aid SA

First Respondents' Counsel : Advocate M Jacobs

First Respondents' Attorneys : UP Law Clinic

Second Respondent's Counsel :

Second Respondent's Attorneys :

Third Respondent Counsel :

Third Respondent Attorneys :

Fourth Respondent Counsel :

Fourth Respondent Attorneys :

Fifth Respondent Counsel :

Fifth Respondent Attorneys :

Sixth Respondent Counsel :

Sixth Respondent Attorneys :

Seventh Respondent Counsel : Advocate M Arroyo

Seventh Respondent Attorneys : Marius Blom Incorporated

Eighth Respondent Counsel : Advocate M Arroyo

Eighth Respondent Attorneys : Marius Blom Incorporated

Ninth Respondent Counsel :

Ninth Respondent Attorneys :

Date of hearing

: 28 July 2020

Date of judgment

: 28 August 2020

[1] 1949

(3) SA 637 A

- [2] See also *Gordon v Department of Health Kwa Zulu Natal* [2008] ZASCA 99; 2008 (6) SA 522 SCA para 9.
- [3] *Bouring No. v Vredendorp properties CC and Another* 2007 (5) SA 391 at page 21 para G.
- [4] See *Silber V. Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 A at page 353A.
- [5] See *Fischer and Another V. Ramahlele and others* 2014 (4) SA 614 SCA at para 13.
- [6] See *Gross V. Pentz* [1996] ZASCA 78; 1996 (4) SA 617 A at page 632 C-F.
- [1] [7] [2011] ZA SCA 216 at para 19
- [8] See *Mars Incorporated .V. Candy World (Pty) Ltd* 1991 SA 567 at page 575 H-I.
- [8] See *Mars Incorporated .V. Candy World (Pty) Ltd* 1991 SA 567 at page 575 H-I.

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