

SOUTH AFRICA / JUDGMENT

Sifuba and Another v Mario Coetzee Attorneys (20224/18) [2018] ZAGPPHC 870 (3 December 2018)

[2018] ZAGPPHC 870

COURT

North Gauteng High Court, Pretoria

BEFORE

P.M. Mabuse

CASE / FILE NUMBER

20224/18

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****(1)****REPORTABLE:****YES/NO****(2)****OF****INTEREST TO OTHER JUDGES: YES/****NO****(3)****REVISED****CASE NUMBER: 20224/18****DATE: 3 December 2018****BUSISIWE****SIFUBA****First Applicant****NZALISEKO****SIFUBA****Second Applicant**

V
MARIO
COETZEE ATTORNEYS
Respondent

JUDGMENT

MABUSE J:

[1] The Applicants seek an order in the following terms:

“(i) directing and compelling the Respondent to effect payment to the Applicants in the . amount of R988,521.00;

(ii) that the Respondent pay interest on the amount of R988,521.00 at the rate of 10.25% from 3 March 2018 to date of final payment;

(iii) that the Respondent pay the costs of this application on the scale as between attorney and client, and

(iv) further and/or alternative relief."

This application is opposed by the Respondent who has, for that purpose, delivered an opposing or answering affidavit. The said answering affidavit contains the grounds upon which the application is opposed. The reasons for the application and the grounds for opposing the application will be set out later in this judgment.

[2] THE PARTIES

(i) The First Applicant is an adult female who resides on [.....], Flats. The Second Applicant is the husband of the First applicant;

(ii) The Respondent is a firm of attorneys which conducts their practice at 225 Muller Street, Queenswood, Pretoria. Mario Coetzee is the sole practitioner who conducts business under the name of Mario Coetzee Attorneys.

[3] The issue that this Court is called upon to decide is whether the Respondent is liable to refund the sum of R988, 521.00 paid into his trust account by the Applicants in the circumstances where the Respondent has failed to effect the transfer of the property to the Applicants.

[4]

BACKGROUND

On 22 February 2017 and in Port Elizabeth the Applicants, as purchasers, entered into a written agreement of sale of immovable property, known as portion [...] (hereinafter referred to as "the property") in terms of which they purchased from the seller, Stander Family Trust ("the Trust") who sold to the purchasers the said property. At the conclusion of the said agreement, the seller was represented by one Daniel Macgregor. He alone signed the agreement on behalf of the seller. The applicants signed the agreement both as purchasers.

[5] The material terms of the said agreement of purchase and sale, referred to in the papers as "offer to purchase", were as follows:

[5.1] the purchase price of the said property was the sum of R965,000.00 which was payable against registration of the property into the names of the purchasers which amount the purchasers would pay within 7 days of the acceptance of the offer;

[5.2] in terms of clause 7 of the said agreement of purchase and sale the purchasers would on demand pay all expenses of and incidental to the registration of the property into their names as well as the costs of the registration of any bond referred to in the agreement.

[6] The Respondent was instructed on 23 February 2017 by Leigh Parry to attend to the transfer of the said property in the names of the purchasers. I will assume that the instructions to mandate the respondent came directly from the seller for, as it will be shown later, it was the seller who revoked its mandate to the respondent. On the same date the Respondent acknowledged, in writing, receipt of the instructions from Leigh Parry Estates.

[7] On .2 March 2017 the Respondent sent by email his proforma account to the purchasers. In terms of the pro forma account it was required of the purchasers to pay the sum of R988, 521,00. The breakdown of the figure of R988, 521.00 was shown in the same email. On 3 March 2017 the purchasers paid the whole sum of R988, 521.00 into account number

[...]. This was the trust account whose full details were provided by the Respondent in its pro forma account. Proof of payment

of the said amount into the said account was attached to the founding affidavit as Annexure 'C'. It is not in dispute, therefore, that proper payment for the purchase price of the aforementioned property was made by the purchasers.

[8] On 25 May 2017 an addendum between the parties was entered into. In the said addendum the parties had agreed that occupation of the property would be given to the purchasers on Saturday 27 May 2017; that the purchaser would not be charged any occupational rental but that the purchasers would be responsible for all consumables such as electricity from the date of occupation of the property.

[9] Having been instructed to effect transfer of the property into the names of the purchasers, he respondent failed to do so. This failure resulted in the exchange of the following correspondence.

9.1 Annexures 'D1 to D7'

9.1.1 'D1'

This is an email dated the 18th of May 2017 from Leigh Parry to Mario@mariocoetzee.co.za that relates to the transfer Stander Family Trust # Nzaliseko Sifuba, parts of the letter reads as follows:

"With regard to the transfer, as you are aware the sale was concluded 12 weeks ago today and hence we are experiencing anxiety from the purchasers. I did have a meeting with Amanda this morning with regard to this matter and I sense a level of frustration as the contact she has given who has attending to this. matter is no longer in your employ - 'Bonita Potgieter' Would you please be so kind as to furnish me with a further contact as the purchasers have also indicated that they have tried several times to reach you and we received correspondence from the purchasers yesterday stating that they are highly dissatisfied with this matter as If was a full cash transaction of which you hold in your trust account. The purchasers have intimated that if there is not some clarity on this matter they feel they are within their rights to cancel. The option of moving in earlier is not viable for them because they intend to fully renovate the house and would not be willing to spend funds until transfer is through. I am having a meeting with the purchaser next week and I would like to furnish her with clarity as to where the delay is lying and an estimated transfer date.

If there is anything I can do from my side I am more than happy to go down to the council and assist if I may as I understand from Amanda that there seems to be a delay with regard to the municipal clearance? Could I please respectfully request that you make personal contact with the purchasers and put their minds at ease somewhat? With regard to this matter may I also request that al further- correspondence comes through me. as the principal, until transfer. I am rather concerned about the state of mind of the buyers and would like to attend to this matter myself until registration."

9.1.2 'D3'

This is an email dated 8 May 2017 at 05h13 pm by Mario Coetzee to Leigh Parry of Parry Estates.

9.1.3 'D4'

This is an email written on the 19th of May 2017 at 08h55 am by Leigh Parry to Mario Coetzee.

9.1.4 'D5'

This is an email written by Leigh Parry to Mario Coetzee dated June 2017, This email reads as follows:

"We have tried numerous times to contact you via telephone with no luck. Please can you either email or phone me on 0826592610 with feedback on the progress of the abovementioned transfer. I am getting rather anxious and would like to give the purchasers some feedback.

Have a super weekend.

Fondest regards

Leigh."

9.1.6 'D6'

This is an email dated 2 June 2017 written at 08h49 by Leigh Parry to Mario Coetzee. It reads as follows:

"I am Just following up a few transactions. Last Friday I sent you the addendums, do hope they were received, I have had some IT issues of late so Just want to confirm. Please also furnish me with some feedback on the progress of this transfer. "

9.1.7 'D7'

This is an email dated 18 July 2017 written at 08h54 BY Leigh Parry to Marlo Coetzee. It read\$ as follows:

"This will now be the 6th email I am sending you with no response from the previous 5 in the 9 weeks since your last email to us dated 18 May 2017 Our purchasers are at their wits end as I understand from them that you have not responded to their queries either on the progress of the transfer. In two days' time you will have held the full purchase price and costs in your trust account for 5 months."

[10] In addition to the foregoing emails and numerous telephone enquiries over the period of February 2017 to June 2017 to the Respondent for updates regarding the transfer process were simply ignored and not responded to.

[11] On 18 July 2017 the Second Applicant addressed an email to the Respondent. A copy of the said email is attached to the founding affidavit and marked 'E1'. The said email sets out in detail the frustration experienced by the Applicants in obtaining progress reports from the Respondent with regards to the transfer process. The Second Applicant also addressed a further email to the Respondent on 2 August 2017. Once again he expressed his dissatisfaction with the matter and advised the Respondent that the Applicants intended seeking legal advice from somewhere else. Following the said email of 2 August 2017 the Applicants requested another firm of attorneys, Greyvenstein, to liaise with the Respondent with a view to obtain an update regarding the transfer process. They too were unable to obtain any update from the Respondent.

[12] The seller thereafter terminated the Respondent's mandate.

[13] On 22 August 2017 Greyvenstein addressed an email to the Respondent. The said email stated among others, as follows:

"Good afternoon Mario

The subject matter and numerous emails and telephone calls have reference.

We attach hereto Mr and Mrs Sifuba's authorisation and instruction to pay over all monies paid into your trust account for your attention.

We place the following on record·

You were instructed by the seller to attend to the transfer of [...] from the Stander Family Trust to Mr and Mrs Sifuba during February of this year. The purchasers have paid the full purchase price of R965, 000.00 into your trust account, together with costs of transfer.

The parties were never requested to sign transfer documents and after numerous requests from the agents, seller and purchaser you have failed to do anything in this matter. You have not replied to any emails and do not return any phone calls. The estate agent in the matter has made countless attempts to get feedback.

We hold the original title deed and have had all the transfer documents signed. You have been removed as the trustee of the seller and your mandate has been formally terminated in writing. You have failed to reimburse the purchaser despite numerous requests.

The purchasers have been in occupation for months without paying any occupational rent and this has resulted in the seller suffering damages.

The purchaser's funds are held in your trust account unlawfully. Please ensure that the purchaser is reimbursed in full by making payment into our account by no later than close of business on 24 August 2017.

Regards."

The purchasers' new attorneys have prepared all the required documentation to enable them to transfer or to register the immovable property into their names. Both the purchasers and the sellers have signed the transfer documents to enable transfer in the Deeds Office.

[14] During August and September 2017 the attorneys MWIM also addressed correspondence to the Respondents requesting that the funds paid by the Applicants to the Respondent be paid over to Greyvenstein Incorporated. A copy of such correspondence was annexed to the founding affidavit as 'G1' and 'G2'. The Respondent similarly did not respond to such correspondence. The letter dated 23 August 2017 from MWIM to Mario Coetzee reads as follows:

"The abovementioned matter refers as well as our letter dated 11 August 2017.

We have been mandated by our client to demand, as we hereby do, that all the monies paid Into your trust account by our client be transferred to Greyvenstein Attorneys.

The said monies must be paid into Greyvenstein Attorneys' trust account details of which appear in the Authorisation Letter attached herewith.

The transfer must be made within 2 (two) days of receipt hereof failing which we have instructions to commence legal actions against you.

We hope the above is in order and await your cooperation.

Yours Faithfully,

MWIM Attorneys.”

The letter dated 7 September 2017 from MWIM to the Respondents reads as follows:

"The above mentioned matter and all numerous emails and letters refer.

We have received correspondence from Sacha Ramirez indicating that your instruction to them in respect of the transfer has been terminated See attached

Your mandate to attend to the transfer has been officially terminated as well. See attached

Greyvenstein Attorneys have been mandated to attend to the transfer of the property and our client has requested the transfer of the purchase price paid into your trust to Greyvenstein Attorneys.

In view of the foregoing, you are hereby afforded until the end of business day of Friday the 8th of September 20 17 to pay over the purchase price to Greyvenstein Attorneys or revert with reasons why the payment cannot be made,

failing which we shall take action to recover the money with interests.

We hope the above is in order and await your cooperation.”

[15] On 9 November 2017 Johanna Oelofse wrote an email to Mario Coetzee. This is what the said email stated:

"1. The above matter and previous correspondence with you herein refers.

2. We have on a number of occasions requested you to pay the purchase consideration of R965,000.00 into our trust account in order to enable ourselves to finalise the transfer herein.

3.. Notwithstanding such requests, you have failed, refused and/or neglected to do so.

4. We hereby afford you with one last opportunity to pay the purchase consideration of R965,000.00 into our trust account within 48 hours from date of receipt hereof, failing which our instructions are to proceed with an Application to the appropriate High Court for an Order compelling you to pay such funds over. We shall also seek punitive cost order against you for the legal costs Incurred

5. The funds must be paid into our trust account, the details of which are as follows- Absa Bank Newtown Park

Account number: [...]

Branch Code: 511917.

6. Please quote our reference number and MAT85941 when effecting payment.
7. We trust that no further action will be necessary on our part and look forward to receiving payment within the time period referred to.

Yours faithfully

Greg Parker

[16] On the 14th of November 2017 at 08h44 Johanna Oelofse wrote another letter to Merlo Coetzee. It states as follows:

"1. We refer to our email dated 9 November 2017

2. We have still not received written confirmation from your offices that the amounts paid by my client into your trust account have or will be refunded.
3. We have given you more than a sufficient period of time within which to make the necessary arrangements to transfer the funds.
4. We are now instructing Counsel to prepare an Application to obtain an Order compelling your offices to pay the funds into our trust

account. We shall also now be seeking a punitive cost order on the attorney and client scale in view of your conduct herein.

Yours Faithfully

Greg Parker."

It is important to point out that there was no response from the Respondent to the subsequent emails, one dated 23 November 2017 written by Johanna Oelofse to the Respondent and the other dated 27 November 2017 also from Johanna Oelofse to the Respondent.

[17] It is the Applicants' case that up to date hereof the Respondent has refunded any of the money paid by the Applicants to the Respondent neither to them nor to Greyvenstein Attorneys who are accordingly unable to proceed with the transfer of the property,

[18] The Respondent has raised six grounds on the basis of which he opposes the application. One of such grounds, which is contained in his answering affidavit, is based on a point in limine of the misjoinder.

[19] THE POINT IN LIMINE

The Respondent's attitude is that the application should be dismissed because the Applicants have misjoined the parties. They contend that Stander Family Trust, being the seller of the farm, should have been joined as a party. Secondly, on the merits the Respondent state that the Applicants conveniently neglected to mention that the Applicants have already taken possession of the immovable property and did not pay any occupational rental. Thirdly, the Respondent contends that the Applicants have neglected to mention that the transfer of the property was delayed as a result of the municipal clearance figures that were incurred and revised. Fourthly, he contends whilst the transfer was being attended guarantees were delivered to the seller. "These guarantees of the purchase price being kept in their firm's trust account were never cancelled and cannot be cancelled upon without all the parties consent." Fifthly, the Respondent contends that "the seller had breached R100, 000.00 and R18,000.00. The R18,000.00 was for the electrical certificate that had to be obtained. In order to have secured this loan for the seller the Respondent's firm had to deliver a guarantee that upon the date of transfer the monies, together with interest and cost would be deducted and paid over." He contended furthermore that the Applicants have a legal duty to ensure that the seller of the farm in question, the Stander Family Trust, was made aware of the relief sought and that therefore the Applicants had a duty to ensure that the seller was also cited in the application.

[20] This point in limine that the Applicants have a legal duty to ensure that the seller of the farm in question was made aware of the relief sought and that the Applicants had a duty to ensure that the seller was also cited in the application was the only point that the Respondent had raised in the answering affidavit. In his heads of argument, the Respondent had raised two more points in limine which he had not raised in his answering affidavit. These two points in limine were that:

[20.1] the application was defective as the Applicants did not allege any cause of action. According to such heads of argument, the Applicants have a duty to state whether they rely upon a delict, or an interdict or a contract or any other cause of action;

[20.2] it is alleged, as the second such point in limine, that the Applicants are seeking that the monies be paid to them instead of the newly appointed attorneys. Paying money back to them would be an injustice and against the contract of sale that was concluded between the Applicants and the seller of the property, so the argument continued.

[21] Mr Nkosi who appeared for the Applicants argued that the Respondent has no justification in law to refuse to refund the money and furthermore that in fact he has no defence at all against the relief that the Applicants seek.

[22] The Respondent, Mario Coetzee, is a duly admitted attorney of this Court. He is therefore subject to the provisions of the Attorneys Admission Act 53 of 1979 ("the Act"). Section 78 of the said Act deals with trust accounts. It provides in subsection (1) that:

"Any practising practitioner shall open and keep a separate trust banking account at a banking institution in the Republic and shall deposit therein the money held or received by him on account of any person."

Any practitioner who contravenes the provisions of the Act relating to his trust account will be guilty of unprofessional conduct and liable to be struck off the roll of attorneys or be suspended, depending on the gravity of the misfeasance. On the strength of the provisions of s 78(1) of the Act the Court must assume, unless the contrary is proved, that the Respondent has opened, and is keeping, a banking account with a banking institution in this country; that he has deposited the said sum of R988, 521.00 into the said account and that the said amount is available on demand. The Respondent is holding the money for the Applicant, in terms of the provisions of s 78(1) of the Act.

[23] Until the property is registered in the names of the purchasers, in this case the Applicants, the sum of R988, 521.00 does not belong to the seller nor does it belong to the Respondent. It is therefore held in trust by the Respondent on behalf of the purchasers. The upshot hereof is that the purchasers have at all material times been in a position to demand immediate repayment of the said money to them or to give instructions that it be transferred to other attorneys. In law the Respondent has therefore no right to refuse to pay the money back to them or to another attorney as the Applicants had instructed.

[24] The Respondent was instructed by the seller to transfer the property, in other words, a contract of agency came into being between the seller, as principal, and the respondent, as an agent in terms of which contract the seller mandated the respondent to perform a certain juristic act on the seller's behalf. Accordingly the respondent was, in his capacity as an agent of the seller, obliged to perform the task entrusted to him by the seller to perfection and in accordance with the seller's instructions, with reasonable care, skill and diligence within a reasonable time, in good faith and, having done so, to render an account to the seller and to deliver any proceeds, in other words the purchase price, to the seller.

[25] An agent must execute a mandate given to him by the principal with due care, skill and diligence. The standard of care is that of a reasonable man, see in this regard Bloom's Woollens (Pty) Ltd v. Taylor 1962(2) SA 532 (A) where the court had the following to say:

"At this point I wish to emphasise that in our law a person who has undertaken an obligation is bound duly to perform it."

Where the performance of such a mandate requires special knowledge, skill or qualifications, like it is the case in casu, the respondent, by undertaking to carry out the mandate, by implication warrants that he possesses the requisite knowledge, skill and qualifications, see Mouton v. Die Mynwerkersunie · 1977 (1) SA 119 (A).

[26] In terms of the law, where the agent, inter alia, unduly delays in executing his mandate or where he fails completely to carry out the mandate given to him by the principal, such as the seller in the instant case, the seller is entitled to summarily revoke the agent's or

respondent's authority to perform any juristic act on his behalf, provided that the instructions given by the principal to the agent have not been carried out, like in the current case, see *Firs Investment Ltd v. Levy Bros Estates (Pty) Ltd* 1084 (2) S A 881 (A). Therefore an agent's authority to perform any juristic act on behalf of his principal may be terminated, as it has happened in this case, by revocation of the mandate by the principal. Once this has happened the agent may not perform any juristic act for

the principal.

[27] The Respondent has made no attempt at all to deal, in his answering affidavit, with the allegations contained in the founding affidavit:

[27.1] It is alleged by the Applicants that, subsequent to the receipt of the instructions to attend to the transfer, the Respondent took no steps to give effect to the transfer. The Respondent has neither denied nor admitted these allegations. He has not produced any evidence to prove that he took steps to transfer the property into the purchaser's names. He did not refute the allegations contained in the letter dated 22 August 2017 from Greyvenstein Attorneys that as at 22 August 2017, he had not requested the parties to sign the transfer document. In fact this Court can infer from lack of progress reports by the Respondent to the Applicants, the seller and estate agent, that the Respondent has not done anything towards transferring the property;

[27.2] Furthermore it was alleged by the Applicants that numerous telephone enquiries over the period February 2017 to June 2017 to the Respondent for updates regarding the transfer of the property were simply ignored. The Respondent failed to deal with this allegation, in other words, to admit or to deny it;

[27.3] The Applicants made allegations in their founding affidavit that several correspondence written to the Respondent by them, the estate agent and two firms of attorneys were not responded to. The allegations were neither denied nor dealt with by the Respondent. In fact the Respondent admitted on questions by the Court during the hearing of this matter that he received the correspondence referred to in the founding affidavit. More importantly he admitted that he did not respond to such communication. He gave no reason at all why he failed to do so. In the book *Professional Practice For Attorneys* by Ferdinand van Blommenstein, at page 67, the learned writer wrote:

"That one of the most common causes of complaint against attorneys is that they either do not acknowledge instructions received from clients or their correspondents, or that they do not reply to incoming letters, nor do they promptly and adequately report and account to clients or instructing correspondents. ... The complaints are quite unnecessary and give rise to infinitely more trouble than would have been experienced had letters been acknowledged, or reports sent out timeously. Repeated or aggravated conduct of this nature can only force the appropriate Law Society to take action against the offending member, who is usually then put to a great deal of expense and trouble.

My honest recommendation, therefore, is that you should keep in touch with your clients or your instructing correspondents; acknowledge instructions and incoming letters promptly; report frequently, even if there is very little to report; account for funds collected or received as often as possible, unless, in fact other arrangements have been made with particular clients. "

[27.4] A further allegation, in my view, a material one, made by the Applicants was that "the trust thereafter terminated the Respondent's mandate." This allegation was not disputed, even though the Respondent was later to contest the validity of the verifying affidavit by a certain Mr Daniel McGregor Stander ("Standar"). I assume that he is the one who represented the seller at the conclusion of the agreement of sale of the immovable property. In his affidavit the said Standar had testified that:

[27.4.1] he was a trustee of the Standar Family Trust;

[27.4.2] he had read the affidavits of the First and Second Applicants with regard to the application;

[27.4.3] he confirmed the application insofar as it related to him or to Standar Family Trust; and

[27.4.4] he confirmed that both he and the Standar Family Trust support the application as transfer currently could not take place as the Respondent was refusing to pay the purchase price and transfer costs to Greyvenstein Incorporated who were attending to the transfer;

[27.4.5] it was contended by the Respondent that the said affidavit, called the confirmatory affidavit, was only served on the Respondent on 29 June 2018 long after he had on, 5 June 2018, delivered his answering affidavit. The Respondent complained that he was unable to deal with its contents because it was delivered late;

[27.4.6] another complaint by the Respondent was that the said affidavit was not part of the founding papers because it was not marked as an annexure. That it was not marked as an annexure is quite correct and furthermore the affidavit was only served on the Respondent on 21 May 2018

[27.4.7] it was pointed out by the Court that, according to the court file, the confirmatory affidavit of Standar was served at the Respondent's offices on 21 May 2018 at 11h24. Hereupon the relevant receipt of acknowledgement was placed before him. He then told the Court that he was not aware of it. He furnished no explanation why he was not aware that the confirmatory affidavit had been served at the Respondent's offices. There was therefore no reason by the Respondent why he failed to deal with the contents of the affidavits in its answering affidavit. He could not claim prejudice if the said affidavit is accepted by the Court as evidence. The Respondent had an opportunity to deal with the contents of the said affidavit in its answering affidavit. He has failed to do so. This point in limine is accordingly dismissed due to lack of merit;

[27.4.8] finally, an allegation was made by the First Applicant that the conduct of the Respondent in refusing to refund the said sum in question was highly unprofessional. This allegation too was not disputed.

[28] According to the authorities, see in this regard *Moosa v Knox* 1949

(3) SA 327 (N) at page 331; *United Methodist Church of South Africa v Sokufundamala* 1989 (4) SA 1055 (0) at 1059 (A), the allegations made by the Applicants and which the Respondent did not deny can be accepted as the truth by this Court. It is expected of the Respondent, in his answering affidavit, to admit or deny or confess and avoid the allegations in the Applicants' affidavit. If, like in the present case, the Respondent fails, in his answering affidavit, fails to do so, the Court is entitled to accept the Applicants' allegations as correct.

[29] THE RESPONDENT'S POINT IN LIMINE

[29.1] Misjoinder

The Respondent had raised a point in limine against the Applicants' application on the ground that the Applicants have failed to join the seller of the property. This point was raised by the Respondent both in his answering affidavit and his heads of argument. In practice this is called misjoinder. Considering that he was instructed by the seller or estate agent to transfer the property into the Applicants' names and considering furthermore the fact that the seller has terminated his mandate to him, which he did not deny, the Respondent had no locus standi to act for the seller. The affidavit by Stander makes it very clear that his mandate has been terminated. It is accordingly not pro per for him to try and act for the seller in circumstances where he holds no brief for

the seller. This point in limine is accordingly dismissed;

[29.2] No cause of action

The point in limine raised that the Applicants have a duty to state if they are reliant upon a delict or an interdict or a contract or any other cause is nonsensical and without any basis in law. This, in my view, shows that the Respondent is clutching at straws. I find the Respondent to be an unscrupulous litigant with a single mind to delay this case. The Respondent is on a fishing expedition to ascertain whether there might be a defence in the points in limine he has raised against the application. This point in limine is also dismissed due to lack of merits.

[30] In paragraph 5.8 of the answering affidavit, the Respondent states that:

"What is further important to mention is that the seller had breached R100, 000. 00 and R18, 000.00 The R18,000.00 being for the electrical certificate that had to be obtained In order to have secured this loan for the seller my firm had to deliver a guarantee upon date of transfer of the money together with interest and costs would be paid over. "

The feet of clay with this allegation is that the Respondent failed to show how the allegations made in that statement affect the Applicants or the return of the money paid by the Applicants ; he failed to show how the said allegation prevents him from paying the money to the Applicants. If anything, the said allegation is irrelevant and has no bearing on the Applicants' money. This is an issue, in my view, that the Respondent would have to take up with the seller and not the purchasers.

[31] Speaking with a forked tongue or with a measure of reluctance, the Respondent proposed that the Applicants:

31.1 "should notify the trustees of the Stander Family Trust of the application,·

31.2 once the Stander Family Trust is notified of the proceedings a conveyancing attorney attending to the trust of the farm be instructed to attend to the transfer of the property and his firm be advised thereof;

31.3 that, my firm be directed to pay over to the conveyancing attorneys that is instructed to attend to the transfer of the farm an amount of R738,521.00 being the capital monies received less R250,000.00,·

31.4 the amount of R250,000.00 be preserved in my firm's trust account until such time when the exact amount of my firm's fees has been established as due and payable and issue of the monies that were borrowed to the Stander Family Trust from the monies held in trust is resolved.,,

[32] There is just no basis in law for this proposition. I have stated it on times without number that the sum of R988, 521.00 belongs to the Applicants. The Respondent held it on behalf of the Applicants until registration of the property in their names:

[32.1] there is therefore no reason why it should remain in the trust account of the Respondent when the evidence is clear that the Applicants demand the money to be refunded to them;

[32.2] there will be no need to notify the Stander family. The family already knows about the application. They have aligned themselves with it. They support it. They would have opposed it if they did not agree with it. The Respondent has no authority to speak on behalf of the family;

[32.3] the Respondent has furnished no reason of substance to justify his retention of the sum of R250,000.00 in his trust account when the rest of the money, in particular, R738,521.00 is paid to the transferring attorneys. Firstly, he has tendered no proof that he has rendered any service to either the purchasers or the sellers or to the estate agent or to all three of them; secondly, he has made no such allegation in his answering affidavit that he performed some form of service towards the transfer of the immovable property into the names of the Applicants; thirdly, he has failed to report to the seller or the purchaser or the estate agent or all of them that he rendered any service to them. The absence of any such report is, in my view, clear pointer that the Respondent has not executed his mandate at all in the matter. He failed to refute the allegation contained in the letter dated 22 August 2017 from the seller's new attorneys to him that "the parties were never requested to sign transfer documents." Fourthly, the Respondent has given no

motivation why only the amount of R738,521.00 should be paid to the sellers. It makes no sense. The sum of R988, 521.00 includes the costs of the transfer. In my view, the whole proposition is flawed.

[32] The Applicants have also claimed that the Respondent should pay interest on the amount of R988, 521.00 at the rate of 10.25% from 3 March 2018 to date of final payment. It is not possible in law to grant such relief. It is made impossible by the provisions of s 78(3) of the Act. This section states that:

"The interest, if any, on money deposited in terms of (1) and the interest on money invested in terms of (2) shall be paid over to the fund by the practitioner concerned at the prescribed time and in the prescribed manner. "

So in law, the Applicants, even if the said amount were in lawful possession of any attorney, would not have been entitled to interest. The issue of interest is a matter between the Law Society of the Northern Provinces and the Respondent.

[32] The Applicants have, finally, asked for an order of costs against the Respondent on a scale as between attorney and client. In my view, they are entitled to such costs considering the numerous steps that they took to contact the Respondent to obtain progress reports from him the Respondent's persistent and inexplicable failure to respond to such requests for progress reports; the steps they took to obtain a refund of the money paid to the Respondent and the Respondent's recalcitrant failure to refund the money coupled with the Respondent's obstinate approach to compel the Applicants, much against the warnings given to him, to launch this application and feeble attempt to oppose this application on flimsy grounds and without any valid defences.

[33] In the premises I am of the view that the Applicants have substantially made a good case for the relief that they seek. Accordingly the following order is hereby made:

1. The application is hereby granted.
2. The Respondent is hereby directed and compelled to refund the Applicants the sum of R988,521.00 before close of today's business day, that is 3 December 2018, by depositing the said amount into the following bank account:

Greyvensteins Attorneys

Standard Bank

Account No: [....]

Branch Code: 050017

Reference: Sifuba N-B

3. The Respondent is hereby ordered to submit to the Registrar of this Court proof on 4 December 2018 of such deposit and an affidavit that he has complied with the Order of this Court set out in 2 above;
4. The Applicants' Attorneys are hereby ordered to submit to the Registrar of this Court, within TEN (10) days of 3 December 2018, written confirmation by way of an affidavit, that Greyvenstein Attorneys have received the said amount of R988, 521.00.
5. The Registrar of this Court is hereby ordered to forward a copy of this order together with copies of the contents of this file to the Law Society of the Northern Provinces to investigate the conduct of the Respondent in this matter.
6. The Respondent is hereby ordered to pay the costs of this application on attorney and client scale.

P.M. MABUSE

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicants:

Adv. JSC Nkosi

Instructed by:

MWIM Inc. Attorneys

Counsel for the Respondent:

Mr. M Coetzee (in person)

Instructed by:

Mario Coetzee Attorneys

Date Heard:

28 November 2018

Date of Judgment:

3 December 2018

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Prepared on 9 October 2026 · Esheria