THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 1026/2018

In the matter between:

MARK VAN WYK **APPELLANT**

and

THE MEMBER OF THE EXECUTIVE COUNCIL: DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING OF THE GAUTENG PROVINCIAL GOVERNMENT **FIRST RESPONDENT**

THE MINISTER OF THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM OF THE REPUBLIC OF SOUTH AFRICA **SECOND RESPONDENT**

THE MINISTER OF PUBLIC WORKS OF THE REPUBLIC OF SOUTH AFRICA **THIRD RESPONDENT**

THE REGISTRAR OF DEEDS, PRETORIA **FOURTH RESPONDENT**

THE SHERIFF OF THE COURT, PRETORIA SOUTH EAST FIFTH RESPONDENT

Neutral citation: *Van Wyk v The MEC: Department of Local Government and Housing of the Gauteng Provincial Government* (1026/2018) [2019] ZASCA 149 (21 November 2019)

Bench: Ponnan, Van der Merwe, Mocumie and Mbatha JJA and Eksteen AJA

Heard: 6 November 2019

Delivered: 21 November 2019

Summary: Pleadings – define the issues and scope and ambit of the dispute between the parties – court declining to order transfer on the basis that the immovable property did not vest in the seller – such issue not properly raised on the pleadings or ventilated in the evidence and therefore ought not to have been a triable issue in the proceedings.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Khumalo J sitting as court of first instance):

1. The appeal is upheld with costs.
2. The order of the court *a quo* is set aside and replaced by:

‘(a) The first defendant is ordered to sign all documentation and perform all such acts as may be necessary to effect transfer of Erf 302 Moreletapark and Erf 537 Moreletapark (the properties) to the plaintiff, subject thereto that in the event that the first defendant has returned the existing guarantee to the plaintiff or in the event that the existing guarantee has lapsed prior to the issue of this order, it shall be effected against prior delivery to the first defendant of a replacement bank guarantee issued by a recognised financial institution for payment of the balance of the purchase price in respect of the properties in

the total sum of R543,000.00, payable against registration of transfer of the respective properties;

(b) Failing first defendant's compliance with the order in paragraph 1 above within 30 days of the date of this order (alternatively within 30 days of date of the delivery of the aforesaid replacement guarantee), the fifth defendant is authorised and directed to sign all documentation and to perform all such acts as may be necessary on behalf of the first defendant, in order to effect registration and transfer of the properties to the plaintiff;

(c) The fourth defendant is directed, to the extent necessary, as a precursor to effecting transfer to the plaintiff, to make such entries or endorsements in or on any relevant register, title deed or other document to cause registration of the properties into the name of the first defendant.

(d) The first defendant is ordered to pay the costs of the plaintiff'.

JUDGMENT

Ponnan JA (Van Der Merwe, Mocumie and Mbatha JJA and Eksteen AJA concurring):

[1] This is an appeal against a judgment of the Gauteng Division of the High Court, Pretoria (per Khumalo J) whereby the appellant's claim against the Gauteng Provincial Government for transfer of two notarially tied erven in Moreletapark, Pretoria was dismissed, ostensibly on the basis that the properties in question did not vest in the latter.

[2] The first of the two properties, Erf 302, was knocked down at a public auction on 15 June 2000 to the appellant, Mr Mark Van Wyk, for the sum of R570 000. At the conclusion of the auction the appellant signed a document entitled 'Conditions of Sale – Public Auction', which inter alia provided that: (a) 'the State Attorney will undertake registration of the property in the name of the purchaser' and (b) 'the Purchaser accepts the sale of the property on the terms and conditions set out in the deed of sale'. The deed of sale, which was subsequently signed by the parties, reflected the Gauteng Department

of Development Planning and Local Government (the department) as the seller. Although the appellant duly performed his obligations in terms of the deed of sale by, inter alia, timeously paying the deposit of R57 000 (being 10% of the purchase price) and securing the balance of R513 000 by way of a bank guarantee from a recognised financial institution, it proved impossible for him to obtain registration and transfer of the property.

[3] Five years were to pass before the department explained, in a letter dated 17 January 2005, that it was having difficulty in effecting transfer of the property to the appellant due to the fact that it was notarially tied to Erf 537. The letter continued: 'we have evaluated the outer portion . . . and the market value is R 30,000. I will appreciate an indication from you, accepting this price as to ensure finalization of the transaction.' On 21 February 2005 the appellant replied: 'I am prepared to pay an additional amount of R 30,000 (inclusive of VAT) in respect of the portion of land referred to . . . as Erf 537 Moreletapark'. The parties thereafter entered into a second written agreement of sale in respect of Erf 537 for the sum of R30 000. However, any hope on the part of the appellant that the matter had been resolved was short-lived, because on 7 July 2005 the department addressed a further letter to the appellant in which it recorded that the properties 'have not been vested with the Gauteng Provincial Government, and it will delay the process of transferring the properties to your name'. The letter added: '[w]e therefore suggest that the matter should be treated with patience as our Office is busy with the application of Item 28(1) certificate'.

[4] On 30 July 2007 the department despatched a memorandum to the Department of Land Affairs (now Department of Rural Development and Land Reform), with a view to obtaining 'a signed Certificate in terms of Item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa . . . confirming the vesting of [Erf 302] in the name of the Gauteng Provincial Government' and 'to obtain the concurrence of the Minister . . . for the disposal of the subject property'. In relevant part, the memorandum reads:

'2.3 According to the Gauteng Department of Local Government the property was vacant and earmarked for educational purpose. The Directorate: Land Management in the Gauteng Department of Local Government was mandated to dispose of this property by the Gauteng Provincial Department of Education . . . .

3. Discussion

3.1 The Gauteng Provincial Department of Education is of the opinion that the property is superfluous to the needs of the State. The subject property was sold to a third party at an Auction during 1998 and is therefore not available for land reform purposes'.

The memorandum concluded:

'4. Recommendations

4.1 In view of the above, it is recommended that the accompanying Certificate in terms of Item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) be signed whereby, Erf 302 Moreletapark, Registration Division J.R, in extent of 1.0100ha; is vested in the name of Gauteng Provincial Government.

4.2 It is also recommended that you concur to the Gauteng Provincial Government intended disposal of the above property'.

[5] On 10 October 2008 the Department of Land Affairs approved the recommendation. The following certificate then issued on 25 November 2008:

'I, Mduduzi Petrus Shabane, Acting Director-General of the Department: Land Affairs, acting in the name and on behalf of the Republic of South Africa, a competent authority as contemplated by Item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, do hereby certify that the following property / properties owned by the State, namely:

1. Erf 302 Moreletapark, Registration Division JR, Province of Gauteng

Measuring: 1,0100 (One comma Zero One Zero Zero) hectare

Held *vide* Title Deed No. T9685/1978

2. Erf 537 Moreletapark Extension 7, Registration Division JR, Province of Gauteng

Measuring: 393 (Three Nine Three) square metres

Held *vide* Title Deed No. T42699/1981

Has / have vested in the Provincial Government of Gauteng in terms of Section 239 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993). In terms of Item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, I request the Registrar of Deeds, Pretoria to endorse the vesting of the immovable property / properties in the name of the said Government, on the relevant title deed(s), register(s) or other document(s)'.

[6] Despite now having to hand the Item 28 certificate, the department had a change of heart. Why, remains unexplained. In a letter dated 14 April 2010, the department wrote:

'The above refers. Kindly note that the Department is of the opinion that the purported agreement

of sale pursuant to the auction held in 2002, and any other agreement that might have been entered into in relation to the two Erven mentioned above, is of no force and effect.
You should note that at the time of the purported agreement, the said Erven did not vest in the Gauteng Provincial Government but the National Government, which in term of Section 2(1) of the State Land Disposal Act, 1961, only the President has the authority to dispose of the said land. In the circumstances, the GPG did not have any legal authority to enter into the agreement nor dispose of the property and as such, acted *ultra vires*. Accordingly, there is no valid cause for the transfer of the property to Van Wyk Development Corporation.'

[7] Thus, almost a decade after the appellant had purchased Erf 302 at the auction, he was compelled to issue a combined summons out of the North Gauteng High Court, Pretoria on 21 November 2011. The Member of the Executive Council: Department of Local Government and Housing of the Gauteng Provincial Government (the successor to the department) was cited as the first defendant. The Minister of Rural Development and Land Reform, the Minister of Public Works, the Registrar of Deeds, Pretoria and the Sheriff of the Court, Pretoria South East were cited respectively as the second to fifth defendants. Aside from the first defendant, the others took no part in the proceedings. The first defendant, who defended the appellant's claim in the court below and opposes the appeal in this court, will henceforth be referred to as the respondent.

[8] In the main, the appellant sought an order that the respondent 'sign all documentation and perform all such acts as may be necessary to effect transfer of Erf 302 Moreletapark and Erf 537 Moreletapark' to him. Alternatively, the appellant sought repayment of the deposit in the sum of R 57,000 plus interest and costs. The matter proceeded to trial before Khumalo J, who dismissed the main claim but upheld the alternative claim with costs. The appeal by the appellant against the dismissal of the main claim is with the leave of that court.

[9] The high court held '[n]otwithstanding being satisfied that the execution of the sale agreements was proven, for the seller to be able to pass transfer or for the sale agreement to constitute a valid sale, the seller should be the owner or have been authorized by the owner to sell the property'. In that, it was plainly wrong. It is trite that it is not a requirement

for a valid contract of sale that the seller must be the owner of the thing sold. As it was put in *Köster v Norval*:[1]

'In *Alpha Trust (Edms) Bpk v Van der Watt* 1975 (3) SA 734 (A) 743H-744A, Botha JA summarized the legal position as follows:

"Dit is duidelik dat dit vir 'n geldige koopkontrak volgens ons reg geen vereiste is dat die verkoper van die koopsaak eienaar daarvan moet wees nie. Ofskoon dit die doel van die koopkontrak is dat die koper eienaar van die verkoopte saak moet word, is die verkoper egter nie verplig om die koper eienaar daarvan te maak nie. Hy moet die koper slegs in besit stel en hom teen uitwinning vrywaar. Dit beteken dat die verkoper daarvoor instaan dat niemand met 'n beter reg daartoe die koper wettiglik van die verkoopte saak sal ontneem nie, en dat hy, die verkoper, die koper in sy besit van die saak sal beskerm".[2]

G R J Hackwill, *Mackeurtan's Sale of Goods in South Africa*, 5th ed states:

"As has been indicated elsewhere, although the parties to a contract of sale usually contemplate a transfer of ownership in the thing sold, this is not an essential feature of the contract, and sales by non-owners are quite permissible". (p 23, para 3.1.1.)

"The delivery required of a seller is the delivery of undisturbed possession (*vacua possessio*) coupled with the guarantee against eviction. It is not necessary that the seller should pass the ownership, for the implied engagement of the seller is a warranty against eviction and not a warranty of title, but he must divest himself of all his proprietary rights in the thing sold in favour of the purchaser." (p 66, para 6.2)

(See also De Wet & Van Wyk, *Kontraktereg en Handelsreg*, 5th ed, vol 1 p 329)'.

[10] The high court further reasoned:

'58. Firstly, the item 28(1) certificate was invalid since it was issued by the Acting Director General of the Department of Land Affairs dated 25 November 2008, instead of the Minister. No causa for such endorsement is mentioned except that the Minister concur for its disposal. That is contrary to the purpose mentioned in the Title Deed for which the property was transferred to the state.

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[1] *Köster v Norval* [2015] ZASCA 185; [2015] JOL 34890 (SCA) para 4.

[2] Loosely translated as: 'It is clear that it is not a requirement of our law for a contract of sale to be valid that the seller must be the owner of the thing sold. Although it is the purpose of the contract of sale that the purchaser will become the owner of the thing sold, the seller is not obliged to give ownership thereof to the purchaser. He is only obliged to place the purchaser in possession and to warrant that he will not be evicted. This means that the seller guarantees that no-one with a stronger right thereto will deprive the purchaser of the possession of the thing sold and that the seller will protect the purchaser's possession of the thing.'

59. Furthermore it was not possible for the Minister of Agriculture and Land Affairs to alter the vesting of a property from the National Government to the Provincial Government by merely issuing a new certificate in terms of item 28(1). The court regarded the certificate as a tool to effect registration by the Minister of Land Affairs of a vesting to the National Government; see the unreported judgment of the SCA in *Yellowstar Properties v Department of Development Planning and Local Government* (549/07) [2009] ZASCA 25 (27 March 2009).

60. The properties therefore at the time of sale were not vested in the Provincial Government, specifically the Department of Local Government and Housing or Department of Education. It was therefore ultra vires the MEC's authority to dispose of the properties that being contrary to the s 2(1) provision of the Disposal Act.

61. In the memorandum to the Minister it is mentioned that the properties were to be vested on the Provincial Government for the purposes of being disposed to third parties, which is not a valid causa for the purpose of transfer. The vesting is said to have already happened in terms of s 239 of the Interim Constitution when it came into operation on 27 April 1994. The effects of non-compliance or misuse of the certificate undermines the Constitutional principles contained in s 40 and 41 of the Constitution itself and hampers efficient land administration and reform.'

[11] It is unclear how any of these came to be triable issues in the case. They were not raised by the respondent on the pleadings. Pleadings play a vital role in litigation. They define the issues as well as the scope and ambit of the dispute between the parties. Save for the first 6 paragraphs of the appellant's particulars of claim, which were introductory in nature, the remaining allegations were met with the following response in the respondent's plea: '[a]ll averments herein contained are denied and the Plaintiff is put to the proof thereof'. That repeated refrain appears some 21 times in the plea. The plea did not answer any of the points of substance raised by the appellant. A plea must state clearly and concisely all the material facts on which a defendant relies and must be of sufficient precision to enable a plaintiff to know what case he or she needs to meet.

[12] Although nothing was made in the high court of the point that the plea may well have run afoul of rule 22(2),[3] that the respondent simply contented itself with a string of bare denials, appears to have compelled the appellant to adduce evidence at the trial, the

[3] Uniform rule 22(2) provides: 'The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies'.

greater part of which proved in retrospect to be either common cause or undisputed. The appellant, an advocate, testified that having seen a newspaper advertisement for the sale of 120 Gauteng Provincial Administration properties, he attended the public auction over three days in June 2000. Of the three properties that he purchased at the auction, the other two were successfully transferred into his name by the department. The appellant was accompanied by the second witness, Mr Savvas Skordis, a close friend, who not only witnessed the appellant's signature on the conditions and deed of sale in respect of Erf 302, but also himself purchased a property at the auction. The third witness was Mr Kevin Gie, who testified that he delivered the relevant bank guarantees to the department. The respondent did not call any witnesses. The only case advanced in cross-examination of the plaintiff and his witnesses was that it denied having concluded any contract with the plaintiff.

[13] Much of the evidence adduced on behalf of the appellant was taken up with the long history, lengthy exchange of correspondence and the department's sudden and unexplained about-turn after a decade of generally lackadaisical and desultory responses to the appellant's increasingly plaintive demands for transfer. Unsurprisingly, the high court found that the 'evidence of all the witnesses was clear, cohesive and honest'; and that 'the matter was decided pretty much reliant upon this evidence'. It accordingly held that the sale agreements relied upon by the appellant had been proved. As I shall show, that should have been the end of the matter.

[14] The summons alleged, in part, that:

'23. Erven 302 and 537, Moreletapark at all relevant times constituted provincial land, as envisaged by the provisions of Section 2 and as defined by Section 1 of the Gauteng Land Administration Act, 11 of 1996,[4] vesting in the Gauteng Provincial Government in accordance with

[4] Section 2 of the Gauteng Land Administration Act 11 of 1996 provides:
'(1) The Premier may, on such terms and conditions as he or she may deem fit acquire immovable property or dispose of Provincial land.
(2) Immovable property acquired in terms of subsection (1) shall vest in the Gauteng Provincial Government.'
'Provincial land' is defined in s 1 as 'any immovable property which vests in the Gauteng Provincial Government in accordance with the provisions of section 239(1)(*b*) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), together with any immovable property acquired by the Gauteng Provincial Government pursuant to this Act'.

the provisions of section 239(1)(*b*) of the Constitution of the Republic of South Africa (Act 200 of 1993), which vesting is confirmed:–

23.1 in a memorandum dated 30 July 2007, annexed hereto and marked annexure "N", as confirmed by the Second Defendant's:–

23.1.1 Acting Chief Director: Gauteng Provincial Land Reform Office on 30 July 2007;

23.1.2 Director: Public Land Support Services on 10 November 2008;

23.1.3 Deputy Director-General: Land and Tenure Reform Implementation on 25 November 2008; and

23.1.4 Acting Director-General on 25 November 2008.

24. The certificate in terms of item 28(1)[5] was issued following an application by the First Defendant and following confirmation of the vesting of the Erf 302 and Erf 537 in the Provincial Government of Gauteng by the Gauteng Provincial State Land Disposal Committee, as confirmed by a memorandum issued by the Director: Public and Support Services of the First Defendant on 10 October 2008 . . . .'

Counsel for the respondent submitted that it was for the appellant to have adduced the necessary evidence in support of these allegations. I cannot agree.

[15] In my view those allegations were superfluous to the appellant's cause of action, which sought no more than to simply enforce each of the two deeds of sale against the respondent. The high court approached the matter on the basis that the appellant bore the overall onus and that it was for him to adduce the necessary evidence that Erf 302 and Erf 537 vested in the respondent. But it was not for him to do so. It is important to point out that the term *onus* is not to be confused with the burden to adduce evidence.[6] Here, had such a defence availed the respondent, it was for the respondent to have

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[5] Item 28 of Schedule 6 to the Constitution, headed 'Registration of immovable property owned by the state', provides:

'(1) On the production of a certificate by a competent authority that immovable property owned by the state is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government.

(2) No duty, fee or other charge is payable in respect of a registration in terms of sub-item (1).'

[6] In *Pillay v Krishna & another* 1946 AD 946 at 952-953 Davis AJA observed:

'[I]n my opinion, the only correct use of the word "*onus*" is that which I believe to be its true and original sense (*cf.* D. 31.22), namely, the duty which is cast on the particular litigant, in order to be successful of finally satisfying the Court that he is entitled to succeed on his claim, or defense, as the case may be, and not in the sense merely of his duty to adduce evidence to combat a *prima facie* case made by his opponent.' See also *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 548.

specifically raised it in the pleadings and adduced evidence in support thereof. It did not. What is more, a case may not be decided by invoking relevant legislation which is not relied upon in the pleadings.[7]

[16] Further, the high court took the view that 'the item 28 certificate was invalid since it was issued by the Acting Director-General of the Department . . . instead of the Minister'. The provincial department had applied to the national department for the issuance of the certificate. The national department considered and approved the request, which had the blessing of the Gauteng Provincial State Land Disposal Committee. The memorandum also required the national department 'to obtain the concurrence of the Minister . . . for the disposal of the subject property'. In those circumstances, in issuing the certificate, the Acting Director-General was plainly acting in terms of powers delegated to him.

[17] In any event, the Item 28(1) certificate could not simply be disregarded as if it had never existed. Until set aside by a court in proceedings for judicial review the Item 28(1) certificate exists in fact and has legal consequences that cannot simply be overlooked.[8] This principle, laid down by this court in *Oudekraal*, received the *imprimatur* of the Constitutional Court in *Kirland*. It there held that an 'invalid administrative action may not simply be ignored, but may be valid and effectual, and may continue to have legal consequences, until set aside by proper process'.[9] Moreover, there was no challenge by the respondent to the certificate. As a 'good constitutional citizen', the respondent should either have accepted the certificate as valid, or gone to court to challenge it head-on.[10] That it failed to do. Thus, the high court in effect upheld a collateral challenge to the Item 28(1) certificate, which the respondent had not and could not raise in these proceedings. This, in circumstances where none of the other defendants, who were cited by the appellant, had participated in the proceedings or opposed the relief sought.

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[7] *Maphango & others v Aengus Lifestyle Properties (Pty) Ltd* 2012 (3) SA 531 (CC) para 113.
[8] *Oudekraal Estates (Pty) Ltd v City of Cape Town & others* 2004 (6) SA 222 (SCA) para 26.
[9] *MEC for Health, Eastern Cape & another v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute* [2014] ZACC 6; 2014 (3) SA 481 (CC) para 102. See also *Merafong City Local Municipality v AngloGold Ashanti Ltd* [2016] ZACC 35; 2017 (2) SA 211 (CC) para 104 and *Department of Transport & others v Tasima (Pty) Ltd* [2016] ZACC 39; 2017 (2) SA 622 (CC) para 88. In *Merafong* para 43 the majority made it clear that *Kirland* did not 'fossilise possibly unlawful – and constitutionally invalid – administrative action as indefinitely effective'; it only placed 'a provisional brake' on determining the invalidity of the act.
[10] *Merafong* para 60.

[18] Finally, it is necessary to pass certain observations about *Yellowstar*.[11] In that matter, a copy of a certificate that had issued in respect of the property by the Minister of Land Affairs under Item 28(1) was handed up during the course of the hearing before the high court. The high court took the view that this obviated the need to deal with the relief sought, namely, transfer of the property purchased from the Gauteng Provincial Government. It accordingly merely granted an order which authorised the registrar to effect transfer upon receipt of 'the certificate' from the Minister of Land Affairs. But the document handed in certified that the property vested in national government and, in itself, rather than providing the solution to the problem, constituted the very obstacle to the property being transferred to the applicant. In dismissing an application for leave to appeal brought by the Minister of Land Affairs, the high court clarified that while the certificate handed in had been in the name of national government, the papers stated that the provincial government was in the process of obtaining the property from national government to enable it to effect transfer, and that the stage at which it could do so had not been reached. This indicated that the high court had not intended to authorise transfer directly into the name of the applicant at that stage, but merely to authorise the registrar of deeds to do so when the certificate reflecting provincial government as owner had come to hand. Unfortunately, no such certificate was ever issued, as the national government persisted in opposing transfer of the property to the applicant at a price that bore no relationship to its true market value. As a result, the order of the high court in no way overcame the difficulty facing the applicant in that matter. The national government remained the owner of the property and the respondent remained unable to transfer it to the applicant. On the facts, therefore, *Yellowstar* is plainly distinguishable from the present matter.

[19] In my view, the true importance of *Yellowstar* is to be found in the following dictum: 'Item 28(1) of Schedule 6 to the Constitution provides for a competent authority to issue a certificate in respect of immovable property owned by the state indicating in which particular

[11] *Yellow Star Properties 1020 (Pty) Ltd v Department of Development Planning and Local Government (Gauteng)* [2009] ZASCA 25; 2009 (3) SA 577 (SCA); [2009] 3 All SA 475 (SCA).

branch of government such property is vested, whereupon a registrar of deeds must make such entries or endorsements necessary to register such property in the name of that sphere of government. In order for the respondent to be able to effect transfer to the appellant, it had to obtain an item 28(1) certificate recording that the property vested in the Gauteng Provincial Government. And in order to obtain such a certificate, it was necessary for the respondent to first persuade National Government to transfer the property to the Gauteng Provincial Government.'[12] Unlike in *Yellowstar*, here: (a) national government has not staked a claim to the property and (b) the department has not only persuaded national government to transfer the property to it, but also to issue an Item 28(1) certificate recording that the property vested in it. It follows that, inasmuch as the appellant is entitled to transfer and no impediment stands in the way thereof, the action ought to have succeeded before the high court.

[20] In the result:

1. The appeal is upheld with costs.

2. The order of the court *a quo* is set aside and replaced by:

'(a) The first defendant is ordered to sign all documentation and perform all such acts as may be necessary to effect transfer of Erf 302 Moreletapark and Erf 537 Moreletapark (the properties) to the plaintiff, subject thereto that in the event that the first defendant has returned the existing guarantee to the plaintiff or in the event that the existing guarantee has lapsed prior to the issue of this order, it shall be effected against prior delivery to the first defendant of a replacement bank guarantee issued by a recognised financial institution for payment of the balance of the purchase price in respect of the properties in the total sum of R543,000.00, payable against registration of transfer of the respective properties;

(b) Failing first defendant's compliance with the order in paragraph 1 above within 30 days of the date of this order (alternatively within 30 days of date of the delivery of the aforesaid replacement guarantee), the fifth defendant is authorised and directed to sign all documentation and to perform all such acts as may be necessary on behalf of the first defendant, in order to effect registration and transfer of the properties to the plaintiff;

(c) The fourth defendant is directed, to the extent necessary, as a precursor to effecting transfer to the plaintiff, to make such entries or endorsements in or on any

[12] Para 4.

relevant register, title deed or other document to cause registration of the properties into the name of the first defendant.

(d) The first defendant is ordered to pay the costs of the plaintiff'.

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V M Ponnan

Judge of Appeal

APPEARANCES:

For Appellant:	CJ Nel
	Instructed by: Malherbe Rigg & Ranwell Inc., Pretoria Symington & De Kok, Bloemfontein
For First to Third Respondents:	VS Notshe (with him ME Ngoetjana)
	Instructed by: The State Attorney, Pretoria The State Attorney, Bloemfontein