

SUMMARY

Cassim Jooma and Mahomed Sidque Jooma (*"the Applicants"*) are the registered owners of an immovable property located in Vrededorp, Gauteng (*"the Immoveable Property"*). On 26 February 2018, the Applicants and Obakeng Whyte Sekgetho (*"the First Respondent"*) concluded a written transfer agreement in respect of the Immoveable Property in terms of which the First Respondent agreed to purchase it for the sum of R750 000.00 (*"the Agreement"*).

In terms of the Agreement, the Applicants agreed to grant to the First Respondent occupation of the Immoveable Property from 01 April 2018. The First Respondent agreed to pay occupational rental in the amount R3 000.00 per month, commencing on 01 April 2018, payable on the first day of each month. It was also agreed that the First Respondent would be liable for all amounts due to the relevant municipality in respect of water, sewage, refuse removal, rates and taxes.

Payment of the full purchase price, being R750 000.00, was paid by the First Respondent to the Applicants' attorneys to be held in trust, pending the registration of transfer of the Immoveable Property. The First Respondent occupied the Immoveable Property from 01 April 2018, as per the Agreement, and still occupied it at the time the matter was heard. The First Respondent, however, failed to make payment of the occupational rental and municipal charges due in terms of Agreement.

On 18 April 2018, the Applicants' attorneys received correspondence from the First Respondent's attorneys, informing them that the First Respondent was cancelling the Agreement and demanded a refund of the purchase price, which was held in the applicant's attorneys trust account. Another letter, from different attorneys, and on behalf of the First Respondent, soon followed on 18 April 2018, confirming the First Respondent's intention to cancel the Agreement. The Applicants' attorney of record responded on 20 April 2018, advising the First Respondent that he could not unilaterally cancel the Agreement.

The Applicant's instituted a motion against the First Respondent to compel him to take transfer of the Immoveable Property. The Applicants alleged that the First Respondent was in breach of the Agreement, as he did not comply with his obligations in terms of the Agreement. The Applicant stated that the Agreement complies with Section 2(1) of the Alienation of Land Act 68 of 1981 as it in writing and is signed by the parties and therefore in addition the parties, the Immoveable Property and the purchase price are identified therein accordingly the Agreement is valid in terms of the law. The Applicants therefore argued that they have the right to demand performance of the First Respondent's relevant obligation in terms of the Agreement. A Court will, as far as possible, give effect to the Applicant's choice to claim specific performance but has a discretion to refuse and leave it to the Applicants to claim damages.

The First Respondent must allege and prove facts on which the Court can use its discretion in his/her favour, thereby not granting the enforcement of the Agreement. The discretion which the Court enjoys, although it must be exercised judicially, is not confined to specific types of cases, nor is it circumscribed by rigid rules. Each case must be judged in light of its circumstances on a case to case basis.

The First Respondent argued and raised the following points *in limine*; the agreement was invalid and there was no case for the Court to adjudicate as the First Applicant was notified of the termination of the agreement; there was no cause of action as the Agreement does not stipulate the address of the Immoveable Property; the Agreement states that the parties agreed to the jurisdiction of the Magistrate Court and the Applicants failed to set out the facts that would confer jurisdiction of the High Court in respect of the matter; the parties were incorrectly cited as the Applicants' were obligated to join the relevant Municipality to the matter seeing as the Applicant's alleged that the First Respondent failed to pay the municipal charges; and the Applicant's failed to satisfy the requirements for the final interdict requested.

HELD

The Court held that:

1. the Agreement entered into by the parties is valid as it complied with Alienation of Land Act 68 of 1981;
2. in respect of the issues of non-joinder, the Court stated that it is illogical to suggest that the Municipality should have been joined to the proceedings, as the amounts owed by the First Respondent to the Municipality were not being claimed. Therefore, the Applicants are not seeking any relief on behalf of the Municipality;
3. clause 6 of the Agreement does not have effect of ousting the jurisdiction of the High Court. The entire cause of action arose within the Court's jurisdiction. Furthermore, the immovable property is situated within the Court's jurisdiction.
4. the First Respondent is ordered to give due effect to the terms and conditions of the Agreement;
5. the First Respondent is ordered to instruct the conveyancing attorneys to proceed with the transfer;
6. in the event that the First Respondent fails to comply with the above order, the Sheriff of the High Court of South Africa, is ordered to sign the necessary documents to affect the transfer the property in question; and
7. the First Respondent is ordered to pay costs on an attorney and own-client scale.

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