

# REPUBLIC OF SOUTH AFRICA



## IN THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2018/15109

In the matter between:

**CHETTY: CAMERAN**

Applicant

and

**ERF 311, SOUTHCREST CC**

Respondent

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### SUMMARY OF J U D G M E N T

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#### **KAIRINOS AJ:**

Alienation of Land Act, 68 of 1981 – interpretation of section 6 and section 24(1) – voidability of contract for sale of land in instalments.

The Applicant applied for an order compelling the Respondent to transfer an immovable property to him pursuant to a written instalment sale agreement. It was common cause that the Applicant had paid at least 50% of the purchase price. The Respondent contended that it

had lawfully cancelled the contract due to non-payment by the Applicant of the balance of the purchase price and rates and taxes levied on the property. The Respondent had not recorded the contract as required by section 20 of the Alienation of Land Act. The contract did not comply with the requirements of section 6 of the Alienation of Land Act since it did not include certain terms as required by section 6. The issue was whether the contract was *void ab initio* due to non-compliance with section 6 of the Alienation of Land Act. A further issue for determination was whether on a proper interpretation of the contract, the Applicant was liable to make payment of the rates and taxes levied on the property from the date of conclusion of the contract to date of registration of transfer.

*Held*, the Respondent was not entitled to cancel the sale agreement since it had failed to record the contract as required by section 20 of the Alienation of Land Act, 68 of 1981 and was therefore precluded from receiving consideration in terms of section 26 of the Alienation of Land Act. Since it was precluded from receiving any consideration pursuant to the contract until it had recorded the contract with the Registrar of Deeds, it could not place the Applicant in *mora* or cancel the contract.

*Held*, on a proper interpretation of section 24(1) read with sections 2, 5 and 6 of the Alienation of Land Act, only the purchaser is entitled to apply, within two years of the conclusion of the contract, to a court of competent jurisdiction, to declare that a contract which does not comply with the requirements of sections 5 and 6 of the Alienation of Land Act, is *void ab initio*. A contract which does not comply with the requirements of sections 5 and 6 of the Alienation of Land Act is therefore voidable only at the instance of the purchaser and not the seller. The purchaser had not applied within two years of the date of conclusion of

the contract to declare the contract void *ab initio* and the contract was therefore still valid and enforceable.

*Held*, on a proper interpretation of clauses 1.4 and 4 of the contract, that the Respondent as seller was liable for the payment of rates and taxes levied on the property until date of registration of transfer. The Applicant as purchaser was not therefore liable for the rates and taxes levied on the property before registration of transfer.

For the Applicant:

*Adv I Mureriwa*

Instructed by:

*SE Kanyoka Attorneys*

For the Respondent:

*Adv L Van der Merwe*

Instructed by:

*Attie Schlechter Inc Attorneys*

Dates of Hearing: 13 June 2019

Date of judgment: 27 June 2019