REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: YES / [redacted]
(2) OF INTEREST TO OTHER JUDGES: YES/[redacted]
(3) REVISED. ✓

9 May 2014 DS Motepe
DATE SIGNATURE

9/5/14

CASE NO: 34151/12

In the matter between

CAREL PETRUS OOSTHUIZEN N.O	FIRST APPLICANT
GERT KRUGER N.O	SECOND APPLICANT
ALAN LESTER OOSTHUIZEN	THIRD APPLICANT
MICHELLE KIM BREETZKE (OOSTHUIZEN)	FOURTH APPLICANT

And

ESRAH JACOBA LOUW	FIRST RESPONDENT
OENICKA MARNE' VAN DER MERWE	SECOND RESPONDENT
ELIZABETH MARIA PIETERSE	THIRD RESPONDENT
R AND E MICRO LOANS CC t/a R + E BROKERS	FOURTH RESPONDENT
T AND P CARPENTRY AND SERVICES CC t/a T AND P CARPENTRY SERVICE	FIFTH RESPONDENT
HANVER REDDY	SIXTH RESPONDENT
KRISH REDDY RERRACTORY AND BUILDING CONSTRUCTION CC t/a K R R REFECTORY AND CIVILS and/or KRISH REDDY REFRACTORY AND CIVILS	SEVENTH RESPONDENT
STOFFELINA SUSANNA VOOGT N.O	EIGHT RESPONDENT
THE MASTER OF THE HIGH COURT, PRETORIA	NINTH RESPONDENT

JUDGMENT

MOLEFE J:

[1] This is an application wherein the applicant is seeking the following order:

"*1. Paragraph 2 of the order granted by this court on 4 September 2007 under case number 26254/05, be rescinded insofar as it ratified the agreement of sale dated 30 July 2004 between "Esrah Jacoba Louw in die hoedanigheid en kurator bonis vir en ten behoewe van die boedel van Carel Petrus Albertus Oosthuizen as seller, and "Pieterse Eric Arnold en Pieterse Elizabeth Maria", as purchasers, whereby the First Respondent sold Erf 2127, 8 Erasmus Street, Secunda ("the property"), to the Third Respondent and one Eric Arnold Pieterse ("the sale").*

2. It is declared:

2.1 that the sale is null and void ab initio and of no force and effect:

2.2 that the sale is not binding on the trustees of the Carel Oosthuizen Kindertrust, registration number IT 814/92 ("the Trust") and the said trustees have no obligation towards the Third Respondent in terms of the sale;

2.3 that all lease agreements entered into by the Third Respondent with the Fourth, Fifth and Sixth Respondent are of no force and effect;

2.4 that any consent, by way of agreement or any other manner whatsoever, granted by the First Respondent to the Third, Fourth, Fifth, Sixth and/or Seventh Respondents to occupy or use the property or any part thereof, is null and void ab initio and of no force and effect;

2.5 that the First and Third Respondent have no authority to enter into sale and lease agreements in respect of the property, to grant consent to any person or entity to occupy or use the property or any part thereof or to deal in any other manner whatsoever with the property, and that the First and Third Respondents never had such authority;

2.6 that the Third, Fourth, Fifth, Sixth and Seventh Respondents have no valid consent or other right in law to occupy the property.

3. It is declared that the Third Respondent has no claim for improvements and/or retention in respect of the property.

4. The Third, Fourth, Fifth, Sixth and Seventh Respondents are evicted from the property.

5. The First, Third, Fourth, Fifth, Sixth and Seventh Respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved, such costs to include the costs attendant upon the employment of two counsels – provided that, as far as the First Respondent is concerned, her liability in respect of costs are limited to costs on an unopposed basis up to and including 3 August 2012."

Background

[6] The First and Second Applicants are the only trustees of the Carel Oosthuizen Kindertrust (registration number IT 814/92) ("the trust"). The third and fourth applicants

are the children of the late Carel Petrus Albertus Oosthuizen (Jnr) ("Carel") and the second respondent, and were respectively born on 24 March 1985 and 17 May 1987. They are the only beneficiaries of the trust.

[7] The First Respondent is an attorney practising as such with Els, Louw and Rasool Inc., Sanlam Plaza Building, corner of Horwood and Heunis Streets, Secunda. The first respondent does not oppose the application.

[8] The Second Respondent is the Third and Fourth applicants' mother and was their natural guardian when they were minor children. She was also married to Carel. The second respondent does not oppose the application.

[9] The third to seventh respondents gave notice of their intention to oppose the application but only the third respondent delivered an answering affidavit.

[10] The ninth respondent, the Master of the High Court did not oppose the application and made a report to abide the decision of the court[1].

[11] During 1987, Carel suffered severe injuries in an accident at the mine at which he was employed and became permanently unfit for work. He was subsequently awarded compensation for his injuries and disabilities in an approximate amount of R2,5 million. Carel utilised the compensation to purchase a commercial Erf 2127, 8 Erasmus

[1] Bundle pages 117(i) – 117 (ii)

Street, in Secunda and to improve it with the erection of buildings for commercial use. ("the immovable property").

[12] On the advice of Carel's attorneys, Kruyshaar, Jordaan, Chester and Gouws the trust was registered on 10 April 1992, with the founder being the first applicant and the initial trustees being Carel and attorney C J Gouws. The property was registered in the name of the trustees of the trust from time to time on 29 June 1993 as it is evident from the deed of transfer[2]. Carel's purpose with the trust was to secure the compensation he received for the well-being of his children, namely the third and fourth applicants and the position has not changed.

[13] On 18 March 1994, the marriage between Carel and the second respondent was dissolved in terms of an order of this Court under case number 3151/93. The first respondent as an attorney assisted and acted for the second respondent in the divorce proceedings. During the same year in September 1994, Carel disappeared without trace.

[14] On 10 February 1995, Mr Gouws resigned as a trustee of the trust. During 1995, the second respondent, assisted by the first respondent, brought an application in this court under case number 7126/95 for the appointment of attorney JP Kruyshaar as *curator bonis* for Carel. The order was granted on 5 June 1995[3].

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[2] Annexure "GK4" to the founding affidavit (pg 55 – 59)
[3] Annexure "GK5", pp 60 - 61

[15] On 21July 1995, the ninth respondent, the Master of the High Court, issued a letter of authority in terms of which Carel was authorised to act as sole trustee of the trust. This was after Carel's disappearance in September 1994. The reasons for and circumstances under which the letter of authority was issued could not be established.

[16] On January 2001, Mr Kruyshaar passed away. Pursuant to Mr Kruyshaar's death, the second respondent brought an urgent application in this court, under the same case number 7126/95 for:

> "16.1 *the appointment of Adv J.A. Meyer as Curator ad litem, to lodge a full investigation into the position of Carel and to report to the court in that regard;*
>
> 16.2 *the first respondent to be authorised to make certain specific payments to the second respondent from Carel's bank account."*
>
> An order was granted on 30 January 2001[4].

[17] Pursuant to the aforesaid court order, the first respondent acted as if she was the appointed *curator bonis* for Carel in Mr Kruyshaar's stead. Thus on 30 July 2004, the first respondent acting *"in die hoedanigheid en Kurator bonis vir en ten behoewe van die bedoel van Carel Petrus Albertus Oosthuizen",* concluded a written agreement of sale in terms of which she sold the immovable property to the third respondent and her husband at that time, Mr E.A. Pieterse, for an amount of R790 000-00[5].

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[4] Annexure "GK6" of the founding affidavit pp 62 -63

[5] copy of deed of sale annexure GK7, of the founding affidavit pp 64 - 70

In terms of clause 6 of the deed of sale, an occupational rental in an amount of R7 900,00 per month was payable by the third respondent.

[18] At the time of the conclusion of the sale agreement, the immovable property was still registered in the name of the trustees for the time being of the trust and the third and fourth applicants were still minors.

[19] Pursuant to the sale agreement, the third respondent took occupation of the immoveable property, concluded agreements of lease in respect of certain portions thereof with the fourth, fifth and sixth respondents, and all of them are currently in occupation of the property (albeit the sixth respondent is possibly occupying the property through the seventh respondent, a close corporation of which he is a member).

[20] On 4 September 2007, the first respondent, in an *ex parte* application under case number 26254/2005, obtained the following order[6] in this court:

> "1. *THAT Esrah Jacoba Louw be and is hereby retrospectively appointed as curator bonis for Carel Petrus Albertus Oosthuizen from 16 January 2001, with the power and obligations as set out in Annexure 'C' to the founding affidavit.*

[6] Annexure "GK8" founding affidavit p71

2. *THAT all steps taken and things done by Esrah Jacoba Louw from 16 January 2001 to date hereof is ratified as if Esrah Jacoba Louw was appointed on 16 January 2001 as curator bonis for the said Carel Petrus Albertus Oosthuizen.*

3. *THAT the said Carel Peturs Albertus Oosthuizen is presumed to be dead.*

4. *THAT the estate of the said Carel Petrus Albertus Oostyhuizen [sic] is dealt with in terms of the provisions of the last will and testament left by the said Carel Petrus Albertus Oosthuizen and in accordance with all and any legal requirements, required by the Master of the above Honourable Court and/or any legislation.*

5. *THAT costs of this application be paid on an attorney and client scale out of the estate of the said Carel Petrus Albertus Oosthuizen.*

Ad Rescission of paragraph 2 of the order dated 4 September 2007

[21] Counsel for the applicants[7] submitted that *ex facie* the *ex parte* application, it appears that:

21.1 Carel was represented by Adv. J.A. Meyer in his capacity as *curator ad litem* for Carel.

21.2 the third and fourth applicants had a real and substantial interest in the application because Carel, whose declaration of death and disposal of assets were sought, was their father;

[7] Adv D.E. van Loggerenberg SC

21.3 neither the third and fourth applicants, nor their guardian, the second respondent, were given notice of the application or the date of hearing thereof (at the time that the *ex parte application* was brought the third and fourth applicants were still minors; at the time of the order referred to in paragraph 20 above was granted, they were majors.);

21.4 the first respondent deposed to the founding affidavit and she also submitted to the court a report of what she had done in respect of Carel's assets when she *de facto* acted as his purported *curator bonis*. In her affidavit and report she stated that the immovable property was an asset of Carel. She never mentioned the existence of the trust nor the fact that Carel was a trustee of the trust.

[22] Applicant's counsel argued that the first respondent never made any efforts to establish who the registered owner of the immovable property was at the time when she purported to alienate it despite the fact that she had the description of the property and the Deeds Office search would have been a simple exercise. Furthermore, the first respondent was in possession of the municipal accounts and copies of lease agreements with Telkom (which rented the property at some point in time), which indicated that the property belonged to the trust. Neither the first respondent nor Adv. J. A Meyer presented any particulars to the court as regards the value of the immovable property.

[23] Applicants' counsel contends that should the first respondent had disclosed to the court the existence of the trust and the fact that the trustees for the time being were the owners of the immovable property, which had to be utilised to the benefit of the third and fourth applicants, the court would not had granted the order which was sought on an *ex parte* basis. It is counsel's argument that had the judge been aware that the interests of the minor children were involved in the *ex parte* application he would not have granted the order.

[24] Applicant's Counsel contends that the *ex parte* judgment was therefore erroneously granted and in this regard relies on the case of ***Naidoo and Another v Matlala No and Others* 2012 (1) at 153 C**, wherein it was held that in general terms a judgment is erroneously granted if there existed at the time of its issue a fact of which the judge is unaware, which would have precluded the granting of the judgment and which would have induced the judge, if aware of it, not to grant the judgment. It is on this basis that the ratification of the agreement of sale is to be rescinded.

[25] The third respondent does not dispute that the trust owns the property. What is also significant is that the third respondent stated the following in her answering affidavit[8]:

> *"Uit die dokumente voor die Agbare Hof is dit duidelik dat ek die onroerende eiendom uit die boedel van die oorledene gekoop het. Die oorlede was egter nie*

[8] Page 132 par 11

die geregistreerde eienaar van die onroerende eiendom nie. Die Carel Oosthuizen Kindertrust was die geregistreerde eienaar".

This supports the applicants' contention that at no time was the first respondent authorised to act on behalf of the trust and therefore the ratification of the agreement should be rescinded.

Ad Referral to Trial

[26] Counsel for the third respondent's [9] submissions were based on the argument that the third respondent was disadvantaged by the applicants' election to approach the court on application rather than by action even though there are factual disputes that arose and which could only be adjudicated by referring the matter to trial.

[27] Third respondent's Counsel based his argument that there are factual disputes on the following factors:

a) that the third respondent was not privy to the purchasing of the commercial property from the then Stadsraad van Secunda by Carel and was unable to obtain a copy of the deed of sale relating to the purchase;

b) that there is no evidence as to how the commercial immovable property was registered in the name of the trustees;

c) that there is no documentation reflecting how it came about that the commercial property was previously leased to Telkom by Carel (as opposed to

[9] Adv. F.J. Erasmus

the Trust) and how the rental income was channelled through the estate of Carel as opposed to the Trust.

It is counsel's further contention that the third respondent is not in a position to place before the court the first respondent's evidence which is relevant to this application. The first respondent is also first defendant in an action which had been instituted by the applicants.

[28] Counsel for the third respondent further argued that it is of critical importance to the third respondent to prove that the first applicant was appointed as trustee of the Trust on 21 July 1995 and that such appointment should be adjudicated with the full advantage of discovery, compulsion to testify and cross-examination.

The third respondent also raised a possibility that the transfer of the commercial property was in order to defraud the second respondent or was intended to defraud the fiscus. It is because of the above-mentioned reasons that the third respondent's Counsel submits that this application should be referred to trial.

[29] It is trite that in terms of rule 6 (5) (a) where an application cannot be decided on affidavit, the Court has a discretion as to the future course of the proceedings. *See* ***RoomHire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1162 – 1168.*** In this matter the allegations by the third respondent are vague and insubstantial. There is no duty on the applicants to prove that the trustees obtained the immovable property in a legitimate manner and that the transfer duty was paid under circumstances where they rely on the title deed as proof that the immovable property is registered in the names of the trustees for the time being of the trust.

It is trite that vague and insubstantial allegations are insufficient to raise the kind of dispute of fact that should be referred for oral evidence.

In this case, it is my view that there is no real dispute of fact which needs to be referred to trial.

[30] The pivotal point in this application is indeed whether paragraph 2 of the order granted by this court on 4 September 2007 should be rescinded insofar as it ratified the sale agreement.

It is noteworthy that although the immovable property was sold by the first respondent to the third respondent on 30 July 2004, the property has not yet been transferred to the name of the third respondent. It is also common cause that at the time the deed of sale in respect of the immovable property was concluded between the first and the third respondents, the trustees for the time being of the trust, and not Carel, was the registered owner of the commercial property. It is clear that the first respondent was never able to give transfer of the immovable commercial property to the third respondent.

[31] In terms of rule 42(1)(a) the court may, in addition to any powers it may have, upon the application of any party affected, rescind or vary an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby. A judgment is erroneously granted if there existed at the time of its issue, a fact of which the court was unaware, which would have precluded the granting of the judgment and which would have induced the court, if aware of it, not to grant the judgment. If material facts are not disclosed in an ex parte application, the order will be erroneously granted.

(See ***Naidoo v Matlala* NO, supra** at 135 C –E). Furthermore, an order granted in an application brought ex parte without notice to a party who has direct and substantial interest in the case is also an order erroneously granted[10]. Once the court holds that an order or judgment was erroneously sought or granted, it should without further enquiry rescind or vary the order, and it is not necessary for the party applying for rescission to show good cause for rule 42 (1) to apply.

[32] *In casu,* the application was brought ex parte and there is no evidence that the application was served on the second respondent in her capacity as the third and fourth applicants' legal guardian whilst they had a direct and substantial interest in the application. The deceased whose declaration of death and disposal of assets was sought, was their father. They were also beneficiaries to the trust which owned the immovable property. Consequently, the order granted on 4 September 2007, without notice to either of these parties, was in my view, erroneously granted.

Furthermore, there existed at the time of the issue of the order, facts which the honourable Jooste, AJ was unaware of which facts would have precluded the granting of the order and which facts would have induced the honourable judge not to grant the order. On this point, it is again my view that the order was erroneously granted. The immovable property at the time the sale was concluded, belonged to the trustees for the time being of the trust, and not to Carel. This case is therefore one which comes within the ambit of Rule 42 (1) (a) of the Rules of Court. In the premises the order was erroneously granted and paragraph 2 of the order granted by this court on 4 September 2007 under case number 26254/05 is rescinded.

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[10] Clegg v Priestley 1985 (3) SA 950 (w) at 951

Ad the Nullity of the Sale Agreement

[33] It is common cause that at the time the deed of sale in respect of the immovable property was concluded between the first respondent and the third respondent, the trustees for the time being of the trust, and not Carel, were the registered owners of the property[11]. The third respondent in her answering affidavit, raised the following purported defences: sale of a *res aliena* and estoppel.

Res Aliena

[34] Alienation of land is governed by the Alienation of Land Act 68 of 1981. Section 2 (1) of the Alienation of Land Act reads as follows:

> *"(1) No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority".*

[35] In a normal sale of immovable property, either the owner of the property, or the owner's agent (acting upon the owner's written authority) must sign the deed of alienation. In *casu*, the first respondent was neither the owner nor the trust's agent as contemplated in section 2 (1) of the Act, and therefore not legally competent to sell the trust's immovable property and sign the deed of alienation. The immovable property has not been transferred to the third respondent's name (despite the fact that the sale

[11] Deed of transfer, annexure "GK4" to the founding affidavit (pp 55-59)

was concluded in 2004). Consequently, the deed of sale between the first respondent and the third respondent is null and void *ab initio* and of no force and effect.

[36] In my opinion, the third respondent's reliance on the legal principles to selling of a *res aliena* is misplaced. The trustees for the time being of the trust, in particular the first and second applicants have no intention of performing the first respondent's contract with the third respondent nor of selling the immovable property to the third respondent. Therefore the trust is not bound to the sale of the immoveable property. In any event, the principles pertaining to the sale of a *res aliena* cannot override the provisions of section 2(1) of the Alienation of Land Act. For the principles of *res aliena* to prevail, it is a requirement that both seller and buyer *bona fide* believed that the seller was the owner of the property. (See ***Cf Alpha Trust (Edms) Bpk v Van der Watt* 1975 (3) SA 734 (A) at 743 C).**

In this case there can be no doubt that the first respondent did not have *bona fide* belief that she or Carel was the owner of the immovable property. The same applies to the third respondent who failed to ask the first respondent for proof of her curatorship and bluntly relied on the say-so of the first respondent.

It is clear that the first respondent had no authority to sell the immovable property when the property was at all relevant time (and is still is) registered in the names of the trustees. The deed of sale is therefore *void ab initio.*

Estoppel

[37] The third respondent also raise estoppel as her defence. The following requirements on estoppels were set in ***Oaklands Nominees (Pty) Ltd v Gelria Mining & Investment Co (Pty) Ltd 1976 (1) SA 441 (A) at 452 E – G.***

> *"(i) There must be a representation by the owner, by conduct or otherwise, that the person who disposed of his property was the owner of it or was entitled to dispose of it. A helpful decision in this regard is Electrolux (Pty) Ltd v Khota and Another, 1961 (4) SA 244 (W), with its reference at p 247 to the entrusting of possession of property with the indicia of dominium or jus disponendi.*
>
> *ii) The representation must have been made negligently in the circumstances.*
>
> *iii) The representation must have been relied upon by the person raising the estoppels.*
>
> *iv) Such person's reliance upon the representation must be the cause of his acting on his detriment. As to (iii) and (iv), See Standard Bank of SA Ltd v Stama (Pty) Ltd 1975 (1) SA 730 AD".*

[38] It is not the third respondent's case that anyone acting on behalf of the trust negligently made a false representation to her or that the first respondent, when making a representation to her, did so negligently on behalf of the trust. It cannot be said that a trustee or anyone acting on behalf of the trust allowed the first respondent to negligently make a representation that the immovable property belonged to Carel. Furthermore, there is nowhere the third respondent alleges that she relied upon a representation of the trustees of the trust and that she did so to her detriment. In my view, the third respondent has not proved the requirements of estoppels as mentioned in ***Oakland***

Nominees Supra. The third respondent is therefore not entitled to rely on estoppel as she failed to take reasonable steps to avoid prejudice to her.

[39] Due to the reasons above-mentioned, the first and third respondents had no authority to enter into sale and lease agreements in respect of the immovable property nor to grant consent to any person or entity to occupy or use the property or any part thereof or to deal in any other manner with the immovable property. Therefore, any consent by way of agreement or any other manner whatsoever granted by the first respondent to the third, fourth, fifth, sixth and/or seventh respondents to occupy or use the immovable property or any part thereof, is also null and void *ab initio* and of no force or effect. The third, fourth, fifth, sixth or seventh respondents have no valid consent or other right in law to occupy the immovable property.

Ad Eviction

[40] Counsel for the applicants submitted that the first and second applicants are currently the registered owners of the immovable property. The third, fourth, fifth, sixth and/or seventh respondents are in possession/occupation of the property. The fourth to seventh respondents do not oppose the application and there is no evidence before the court justifying their continuous occupation/possession of the immovable property.

[41] The third respondent in her answering affidavit alleges that she has a right of retention in respect of the immovable property because she *bona fide,* and with the consent of the first respondent, effected detailed improvements to the buildings in the

immovable property in an amount of R1 290 000,00[12]. However, the third respondent's answering affidavit do not set out sufficient facts in order to establish a lien.

[42] Absent any governing provisions in a contract of lease, lessees, like *bona fide* possessors, have an enrichment claim for the recovery of expenses that were necessary for the protection or preservation of the property and for the expenses incurred in effecting useful improvements to the property[13].

To rely on a lien the defendant must allege and prove:

a) Lawful possession of the object; *Roux v Van Rensburg [1996] 3 ALL SA 499 (A), 1996 (4) SA 271 (SCA)*
b) That the expenses were necessary for the salvation of the thing or useful for its improvement;
c) The actual expenses and the extent of the enrichment of the plaintiff;
d) That the plaintiff's enrichment is *iniusta* (unjustified); and
e) That there was no contractual arrangement between the parties (or a third person) in respect of the expenses[14]. See ***Mc Carthy Retail Ltd v Shortdistance Carriers CC (2001) 3 All SA 236 (A), 2001 (3) SA 482 (SCA).***

Having regard to the above-mentioned requirements, I am not satisfied that the third respondent has made a proper case for retention. The third respondent had no authority to lawfully conclude rental agreements with the fourth, fifth, sixth and/or

[12] Page 141 par 38.2 of the answering affidavit
[13] Harms Amlers precedents of pleadings, 7th edition page 256
[14] Harms Amlers precedents of pleadings 7th edition page 262

seventh respondents and their current occupation of the immovable property is unlawful and consequently they should be evicted.

Ad Costs

[43] The general rule is that costs follow the event; however this is subject to the overriding principle that the court has a judicial discretion in awarding costs.

The third respondent is ordered to pay the costs of this application, such costs to include the costs attendant upon the employments of two counsels.

There is no costs order against the second respondent. Although the fourth, fifth, sixth and seventh respondents gave notice of their intention to oppose the application, they did not file their answering affidavit. There is no costs order against the fourth, fifth, sixth and seventh respondents.

Regarding the first respondent, applicant's counsel submitted that the attorneys have agreed that the first respondent's costs be limited to costs on an unopposed basis up to and including 3 August 2012.

[44] In the premises, I make the following order:

> *[1] Paragraph 2 of the order granted by this Court on 4 September 2007 under case number 26254/05, is hereby rescinded insofar as it ratified the agreement of sale dated 30 July 2004 between "Esrah Jacoba Louw in die hoedanigheid en kurator bonis vir en ten behoewe van die boedel van Carel Petrus Albertus*

Oosthuizen" as seller, an "Pieterse Eric Arnold en Pieterse Elizabeth Maria", as purchasers, whereby the First Respondent sold Erf 2127,8 Erasmus Street, Secunda ("the property") to the Third Respondent and one Eric Arnold Pieterse ("the sale").

2. It is declared:

2.1 that the sale is null and void ab initio and of no force and effect;

2.2 that the sale is not binding on the trustees of Carel Oosthuizen Kindertrust, registration number IT 814/92 ("the Trust"), and the said trustees have no obligations towards the Third Respondent in terms of the sale; and

2.3 that all lease agreements entered into by the Third Respondent with the Fourth, Fifth and Sixth Respondents are of no force or effect;

2.4 that any consent, by way of agreement or any other manner whatsoever, granted by the First Respondent to the Third, Fourth, Fifth, Sixth and/or Seventh Respondents to occupy or use the property or any part thereof, is null and void ab initio and of no force and effect;

2.5 that the First and Third Respondents have no authority to enter into sale and lease agreements in respect of the property, to grant consent to any person or entity to occupy or use the property or any part thereof or to deal in any other manner whatsoever with the property, and that the First and Third Respondents never had such authority;

2.6 that the Third, Fourth, Fifth, Sixth and Seventh Respondents have no valid consent or other right in law to occupy the property.

3. It is declared that the Third Respondent has no claim for improvements and/or retention in respect of the property.

4. The Third, Fourth, Fifth, Sixth and Seventh Respondents are evicted from the property.

5. The First and Third Respondents are ordered to pay the costs of this application, jointly and severally the one paying the other to be absolved, such costs to include the costs attendant upon the employment of two counsels-provided that as far as the First Respondent is concerned, her liability in respect of costs are limited to costs on an unopposed basis up to and including 3 August 2012.

D S MOLEFE
JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel on behalf of Applicants	:	**Adv. D E van Loggerenberg SC**
Instructed by	:	**Tim Du Toit & Co Inc.**
Counsel on behalf of third Respondent	:	**Adv. F J Erasmus**
Instructed by	:	**Bernhard van Der Hoven Attorneys**
Date Heard	:	**27 March 2014**
Date Delivered	:	**09 May 2014**