



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 1664/2018

In the matter between:

PABALLO TABITHA MOTHUPI

Applicant

and

BEN FRANCIS MOTHUPI

Respondent

HEARD ON: 28 NOVEMBER 2019

JUDGMENT BY: MATHEBULA, J

DELIVERED ON: 5 DECEMBER 2019

- [1] The applicant is seeking an order to compel the respondent to comply with the provisions of the Deed of Settlement incorporated into a Court Order dated 19 July 2018. These in broad terms, concerns the transfer of ownership of both the movable and immovable property.

- [2] There is no dispute regarding the interpretation of any provision of the Deed of Settlement. The parties are also ad idem that the respondent has not complied with them. Neither has the applicant invoked the relevant provisions demand compliance thereof. There is also no dispute that both are bound by its terms as incorporated in the Court Order.
- [3] The contention of the applicant is that the respondent is neglecting and/or refusing to sign the necessary documentation in order to transfer the motor vehicle into her name. In response, the respondent contends that he had paid the financiers in full and await them to furnish him with the documents to effect transfer as per the agreement.
- [4] Another frontier of the disagreement pertains to outstanding rates and taxes levied on the immovable property. It is the case of the applicant that the respondent is not making payments towards this debt. This is vehemently denied by the respondent. It was pointed that the parties cannot owe an entity called Centlec because the property is supplied with pre-paid electricity. In any event these will be paid to the local authority before transfer is effected.
- [5] The last and probably the most contentious aspect is the outstanding purchase price of the immovable property owed to the applicant. The applicant is seeking an order to compel the respondent to pay it. The respondent is resisting on the basis that he does not have funds to settle the amount at the moment. The high-water mark of his case is that the Deed of Settlement does provide a remedy in the event of non-compliance by any party to the agreement.

- [6] In terms of clause 5.2.3 of the Deed of Settlement, the respondent must furnish the applicant with a proof of payment on request of the motor vehicle. This debt was paid in full in July 2019. At best the respondent had until 31 July to comply with clause 5.2.4 which requires him to ensure that the motor vehicle is registered in the name of the applicant. The papers are silent on what he had done to comply with this clause. The only plausible explanation was oral submission of his counsel that he is awaiting the necessary documentation from the bank (finance house). No explanation was tendered about efforts he embarked upon in order to solve this situation. In that regard, I conclude that he has failed to comply with the agreement and therefore the applicant has made out a case against the respondent and is entitled to the relief sought.
- [7] The next issue is that the respondent has failed to pay the applicant her half share of the purchase price. The reality is that the respondent has made part payment and stopped because of financial constraints. There is no legal basis for the application because clause 5.3.6 specifically provides that in the event that the respondent does not comply, the applicant can transfer the property into her name. Should they both failed to do so, they must sell it for the market related price as stipulated in clause 5.3.7. Instead of invoking these provisions, the applicant prematurely launched this application. It stands to reason that the applicant cannot succeed.
- [8] The last aspect is the non-payment of the rates and taxes to the relevant authority or entity. The reference is made about numerous invoices issued against her in this regard. I could not encounter any invoice and/or demand (issued against the applicant) that the

respondent is not paying the same as stipulated in the agreement. There is no evidence to sustain the allegations levelled against the respondent. There is no merit in this claim.

[9] It will only be fair that each party pays his/her own costs.

[10] Therefore I make the following order:-

10.1 The respondent is ordered to comply with paragraph 5.2.4 of the Deed of Settlement on/or before 5 February 2020.

10.2 In the event that the respondent does not comply with paragraph 10.1 of this Order, the Sheriff of the Court, Bloemfontein East is authorized to sign on his behalf.

10.3 The respondent shall be liable to pay the costs incurred in terms of paragraph 10.2 of this Order.

10.4 The remainder of the application is dismissed.

10.5 Each party to pay his/her own costs.

M. A. MATHEBULA, J

On behalf of applicant:

Instructed by:

Adv. D. de Kock

Phatshoane Henney

BLOEMFONTEIN

On behalf of respondent:

Instructed by:

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