REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO. 9124/2015

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
_____	_____
DATE	SIGNATURE

In the matter between:

ABLESUN INVESTMENTS (PTY) LTD	Applicant
And	
ARMADILLO DEVELOPMENTS 202 (PTY) LTD	First Respondent
SYDNEY REAN BOOYSEN	Second Respondent
THE REGISTRAR OF DEEDS JOHANNESBURG	Third Respondent

JUDGMENT

NOCHUMSOHN (AJ)

1. This is an application for an order:

1.1. Interdicting and restraining the Second Respondent from representing to anybody in any way whatsoever, either directly or indirectly that he represents the Applicant and/or that he is entitled to act on behalf of the Applicant and/or sign documents on behalf of the Applicant in any capacity and for any purpose whatsoever;

1.2. Setting aside and declaring null and void *ab initio* a purported Agreement of Sale concluded between the Applicant and the Second Respondent dated 19 June 2012;

1.3. Setting aside the transfer of the properties from the Applicant to the Second Respondent and registered by the Third Respondent on 23 October 2014 under Deed of Transfer T4…….;

1.4. Directing the Third Respondent to rectify its Deeds Register to reflect that the abovementioned transfers have been set aside and that the Applicant is the owner of the properties reflected therein, within fourteen days of service of a Court Order on the Third Respondent.

2. From the annexures to the Founding Affidavit it is apparent that on 29 September 1992, Certificate of Township Title No. T……. was issued at the Pretoria Deeds Office under the provisions of Section 46(4) of the Deeds Registries Act No. 47 of 1937, reflecting that:

2.1. the Applicant was the registered owner of:

Remaining Extent of Portion of 3… of the Farm
V…… 2……..,
Registration Division I.Q., Transvaal
Measuring 61, 1621 Hectares

2.2. the Applicant had laid out a township called Meadowlands Extension 12 upon a portion of the aforementioned land;

2.3. in pursuance of the provisions of the said Act, the Applicant, its successors-in-title or assigns by virtue of such Certificate of Township Title became the registered owner of:

Portion 3….. (a portion of Portion 3….) (now known as the Township of M…. E….. 1…..) of the Farm V…. 2…..
Registration Division I.Q., Transvaal
Measuring 21,3441 Hectares
As more fully appears from Diagram SGA 9491/1991

3. The aforesaid Certificate of Township Title T8…… which was registered in the Pretoria Deeds Office, bears an endorsement in terms of Section 46(3) of the Deeds Registries Act 47 of 1937 reflecting that the land therein described had been laid out into erven in accordance with General Plan SG No. A9492/1991 approved by the Surveyor-General on 9 March 1992 and booked in a separate register, under the name of Meadowlands Extension 12. Such endorsement was effected by the Third Respondent in the Johannesburg Deeds Office under Registration Number T……., the effect of which was that the township, Meadowlands Extension 12, now fell under the Johannesburg Deeds Registry and was held by the Applicant under the aforesaid number.

4. The said Certificate of Township Title No. T8…… had been lost or destroyed and was replaced by way of an Application for a Certified Copy of such deed in terms of Regulation 68(1) of the Deeds Registries Act 47 of 1937 under document number VA 5169/2012, which copy was applied for by Dorothy Murphy in her capacity as the representative of the Applicant on 08 August 2012.

5. Under Deed of Transfer No. T4….. (which I shall refer to in the remainder of this judgment as “the Offending Deed”) registered by the Third Respondent on 23 October 2014, some twenty-nine separate erven, all situate in Meadowlands Extension 12 Township, and all formerly held by the Applicant under Deed of Transfer No. T4….. and all of which appear upon General Plan No. SG No. A9492/1991, were all transferred from the Applicant to the

First Respondent. The said twenty-nine properties described therein constitute a portion of the aforementioned property described in the parent deed, being the Certificate of Township Title No. T8…… as read with the Section 46(3) endorsement thereon in the Johannesburg Deeds Registry under Registration Number T4……

6. The deponent to the Applicant's Founding Affidavit is Daniel Nicholas Hermanus Mostert. Mostert is an attorney and conveyancer of this court, as well as a director of the Applicant.

7. In the Applicant's Founding Affidavit, Mostert sets out that:

7.1. Murray & Roberts Limited held all of the shares in the Applicant;

7.2. the Applicant had been dormant for a number of years, when Murray & Roberts Limited resolved in 2011 that the Applicant should recommence business;

7.3. the Applicant applied to the North Gauteng High Court to reinstate the Applicant on the Register of the Registrar of Companies, which order was granted in 2012 and the Applicant's status was restored as *'in Business'* on CIPC;

7.4. on 11 June 2014, Murray & Roberts Limited sold its shares in the Applicant to a close corporation known as Mejy, of which Mostert is the sole member;

7.5. pursuant to that transaction, the erstwhile directors of the Applicant, Dorothy Faure (formerly Murphy) and Cheryl Anne van Bosch resigned as directors and Mostert was appointed as the sole director of the Applicant on 12 June 2014, with the change of directorship having been registered at CIPC on 23 January 2015.

7.6. the offending deed was registered without the Applicant's knowledge or authority, and perhaps fraudulently;

as a result of which the Applicant seeks in its relief that I order the cancellation of the Offending Deed.

8. Whilst the Second Respondent hotly contests having acted fraudulently, it would appear to be common cause, on the papers before me, that all of the steps taken in order to bring about the registration of the offending deed were so taken by the Second Respondent, acting on behalf of both the Applicant as well as the First Respondent, without the knowledge of Mostert or his predecessors, Dorothy Faure (formerly Murphy) and Cheryl Anne van Bosch.

9. The Founding Affidavit sets out further that:

9.1. upon learning of the offending deed, Mostert ascertained that the Second Respondent was a director of the First, and addressed a letter to the First Respondent dated 30 January 2015, placing his grave concerns on record and demanding that he be provided with a copy of the Sale Agreement embodying the sale of the various properties transferred and indicating the authority of the person who signed all documents on behalf of the Applicant. The letter also calls for details of the conveyancing attorneys who attended to registration of transfer as well as for proof of payment of the purchase price being R150 000.00, which price appears *ex facia* the Offending Deed.

9.2. the First Respondent responded by way of letter on 2 February 2015 stating that during 1989, Murray & Roberts and Rabie Property Developers acquired the land in question from Rand Mine Properties and that the Applicant was part of a joint venture vehicle created for development. In such letter, the Second Respondent advised that he was the managing director for Rabie, responsible for the project and the township known as Meadowlands Extension 11 and 12 as well as Mnesi Park. Such letter went on to provide that in 1992, Rabie withdrew from the Transvaal and that he, the Second Respondent, acquired Rabie's

assets. The Second Respondent says that the last remaining stands in Meadowlands and Mnesi Park as well as certain stands which he refers to as the frozen stands were purchased by him from the Ablesun Joint Venture for an amount of R150 000.00. In such letter, it was recorded that it was anticipated that the frozen stands would only be developed in ten to fifteen years' time when Dobsonville Road was re-aligned and the stands unfrozen, whatever that may mean. The letter stated further that the Johannesburg City Council decided approximately five years ago not to proceed with the re-alignment of the road and ever since, the Second Respondent had been trying to obtain transfer and clearances. The letter stated further that Mostert ought to have the Agreement of Sale in his file and should also have confirmation of payment of the purchase price of R150 000.00, allegedly made in 1992.

10. The First and Second Respondent cling to this version throughout their opposing papers. Moreover, nowhere in the papers is there any evidence of proof of payment of the consideration of R150 000.00, and neither is a copy of the 1992 Agreement produced. Rather a version is put forward that the 1992 Agreement was lost and was substituted by an Agreement of Sale dated 19 June 2012, constituting the agreement which the Applicant seeks to have set aside and declared null and void. . For the sake of convenience, I will refer to this agreement in the remainder of this judgement, as "the Offending Agreement".

11. The Offending Agreement bears no reference to the 1992 Agreement and does not purport to substitute same. Most strangely, the Offending Agreement, dated 19 June 2012, records that the purchase consideration is payable within 30 days.

12. Mostert ascertained that conveyancers, Olivier & O'Connor, had attended to the registration of the offending deed, from whom he obtained their entire conveyancing file.

13. The *causa* set out in the second page of the Offending Deed is one of Agreement of Sale, in terms of which the Applicant purportedly truly and legally sold on 19 June 2012 to the First Respondent, the properties described therein, for the consideration of R150 000.00. The agreement of sale referred to in the Offending Deed is the Offending Agreement.

14. On the Second Respondent's version, more fully set out in the Answering Affidavit, the Second Respondent concluded the lost 1992 agreement, in which he had purchased the erven for a purchase consideration of R150 000.00, which was duly paid. He set out that he did not do anything in respect of transfer until approximately three years ago, when he set the process in motion to protect his investment and instructed Olivier & O'Connor to obtain the required clearance certificate for the transfer of the land and to have same transferred into the name of his nominee, being the First Respondent.

15. The Second Respondent says further in the answering affidavit that Olivier & O'Connor thereafter prepared the Offending Agreement which he terms:

"*a substitute agreement of sale, as I could not lay hands on the lost agreement, which agreement I signed on behalf of the seller and Vincent Schormann signed on behalf of the Purchaser."*

16. The Second Respondent adds at paragraph 42 of the Answering Affidavit:

"as regards the purchase price of R150 000.00 in the agreement, 'DM13' to the Founding Affidavit, on account of a bona fide error in recording thereof, erroneously stipulated in clause 1 that the purchase price was payable in cash within 30 days from date of signature of the agreement."

17. The Second Respondent adds further at paragraph 42.2 of the Answering Affidavit:

"*Neither I nor Schormann picked this up when signing the agreement and I have established from the conveyancers that this was brought about by the use of a standard form agreement, which is used by Olivier & O'Connor and simply tailored to meet the requirements of varying transactions"*

18. I find these explanations at paragraph 42 of the Answering Affidavit to be palpably implausible and improbable, particularly coming from a man who

was the managing director of the Rabie Joint Venture. One would have expected a far greater standard of care from someone in such a senior position, as one would have expected from his professional advisors, Olivier & O'Connor. Moreover, there was a higher degree of caution required of the Second Respondent, in circumstances where he was acting on behalf of the Applicant, in signing away its properties to a company owned and controlled by him.

19. On the First and Second Respondents' own version, as set out above, the offending agreement is completely fictitious inasmuch as there was no true sale on 19 June 2012, of the 29 erven transferred. Neither was there a consideration of R150 000.00, which would be due for payment within 30 days, as provided for in the Offending Agreement.

20. The 29 erven are then transferred in the Offending Deed, pursuant to the Offending Agreement.

21. As the Offending Agreement is completely fictitious, and does not speak to the true version of the First and Second Respondents, to the effect that the 29 erven transferred were bought and sold for R150 000.00 in 1992, and paid for then, it stands to reason that the Offending Agreement cannot pass muster and falls to be set aside, as prayed for by the Applicant. On that basis, if the offending agreement falls to be set aside, it stands to reason that the Offending Deed which was registered pursuant to the Offending Agreement, must also be set aside.

22. A fictitious agreement which does not remotely speak to the true transaction can never give rise to a valid contract in law, and in turn can never give rise to a valid deed of transfer.

23. Senior Counsel for the First and Second Respondents, Mr de Koning, argued that we follow the abstract theory of transfer in terms of ***Legator McKenna Inc Shea 2010 (1) SA 35 SCA*** and therefore ownership arises from title deeds irrespective as to irregularities in the underlying agreements of sale.

24. What distinguishes this case from ***Legator McKenna*** is that here, on the First and Second Respondents own version, the agreement of sale is entirely fictitious, whereas in ***Legator McKenna***, the underlying agreement was impaired by a technicality for want of the Master of the High Court having confirmed the appointment of a curator in terms of Section 72 (1) d of the Administration of Estates Act, at the time of its signature.

25. The stamp of approval given by the Supreme Court of appeal to the abstract theory of transfer in relation to immovable property, in the ***Legator McKenna*** Judgement, could never extend to validating a title deed originating from a fictitious agreement that is vastly at odds with the original and true agreement between the parties. To allow that would pave the way to legitimising title deeds that in every respect are completely tainted.

26. The Offending Deed bears a Preparation Certificate signed by conveyancer, L Slabbert, effected in terms of Section 15 of the Deed Registries Act, she being a conveyancer in the employ of Olivier & O'Connor.

27. Mostert stated in the Founding Affidavit that the contents of the conveyancing file revealed that there was no FICA documentation obtained in respect of the Applicant. There was no resolution signed by the directors of the Applicant. There was no proof of residence and identity documentation of the Applicant's directors at the time. The documentation reflected the municipal value of the properties at R1 400 000.00, but the value reflected on the Transfer Duty declaration was zero.

28. At time of signature of the offending deed, Dorothy Faure as well as Cheryl Anne van Bosch were the directors of the Applicant and were employed by Murray & Roberts Limited, the Applicant's sole shareholder at the time, neither of whom were approached by Olivier & O'Connor or the Second Respondent to sign any documentation, be it the Offending Agreement nor any transfer documentation in respect of the transaction.

29. It is bizarre for the Second Respondent to have relied upon a resolution signed by the board of directors of the Applicant as constituted in 1990, comprising TB Currin, MW McCulloch and SW Shiller, (none of whom were directors in 2014) to have conveyed authority to him to sign the offending agreement and power of attorney to transfer, 24 years later, without the conveyancers having had such resolution on file and without the Second

Respondent or the conveyancers having checked with the current board of directors that such resolution was still effective. Such resolution was annexed to the replying affidavit as "**RA5**" and was revoked by resolution on 24 August 1994, annexed as "**RA17**".

30. Furthermore, and whilst neither Mr Pretorius nor Mr de Koning raised this issue with me, what sprang to mind after the argument is that:

30.1. in accordance with the affidavit filed by one Langham, for the deregistration of the Applicant, such deregistration was based upon it being divested of all assets and liabilities;

30.2. the application was subsequently brought for the re-registration, based upon the discovery of the properties registered in the name of the Applicant.

31. The effect of this is that the properties transferred may well have represented the greater part of the undertaking of the Applicant, which would have necessitated the passing of special resolutions by the Applicant in terms of Sections 112 and 115 of the Companies Act 71 of 2008, for the registration of transfer of the properties, in accordance with the offending deed.

32. Thus, absent such resolutions in accordance with Sections 112 and 115 of the Companies Act 71 of 2008, any transfer in respect of the greater part of

the undertaking of the Applicant would be invalid and would fall to be set aside.

33. The conveyancers, Olivier & O'Connor had failed to obtain an auditor's certificate in respect of the transaction from Deloitte's, who were the Applicant's auditor at the time, and no contact was made by them with van Bosch or Faure to obtain copies of identity documents, proof of residence or other Financial Intelligence Centre Act 38 of 2001 (FICA documentation). Finally, it was clear that the Second Respondent had signed the offending agreement and all documents on behalf of the Applicant, in order to pass transfer of the properties under the offending deed.

34. In order to pass transfer of any property, one must of necessity lodge with the Registrar of Deeds as part of the conveyancing pack, the existing Title Deed under which the property sought to be transferred is currently held. If the original of such existing title deed has been misplaced, one would obtain a certified copy of such title deed in accordance with Regulation 68(1) of the Deeds Registries Act, and such certified copy would then be lodged in the pack together with the remaining documents for the on-transfer of the property into the name of the prospective purchaser. The Applicant states in the Founding papers that the Second Respondent signed such an affidavit for the issue a certified copy of the Applicant's original title deed. In such affidavit, the Applicant says that the Second Respondent falsely stated that he was duly authorised by a resolution of the directors of the Applicant to depose to the Affidavit. Furthermore, the Second Respondent stated in such affidavit that a certified copy of the Deed of Transfer, namely VA….. which

had been applied for by the Applicant and was still in its possession, had been lost and could not be found after diligent search. There was no search at all, as such certified copy was held by the Applicant who had not been approached for its release.

35. The offending agreement also makes mention of the properties to be transferred in Mnesi Park, leading the Applicant to conclude, as it did, that the First and Second Respondents also intend to obtain transfer of those properties by unauthorised means, necessitating the launching of this application.

36. Notwithstanding the Applicant having demanded of the Second Respondent that he confirms that he will refrain from acting on behalf of the Applicant, the Second Respondent refused to provide such unqualified confirmation.

37. On the First and Second Respondents' own version, the **Second** Respondent acquired the properties, yet transfer was passed by way of the offending deed into the name of the **First** Respondent. If the Second Respondent did acquire a right to transfer of the properties under an Agreement of Sale, which he alleges to have lost, then and in that event, the offending agreement would surely have described the purchaser as the Second Respondent and not the First. In the same vein the transferee in the offending deed would have been described as the Second Respondent and not the First. The transfer to the First Respondent under the offending deed, on the version of both First and Second Respondents, represents a violation

of Section 14 of the Deeds Registries 47 of 1947, which provides that transfers of land shall follow the sequence of successive transactions in pursuance of which they are made, and in terms of Section 14(1)(b), it shall not be lawful to depart from any such sequence. The failure to have given effect to Section 14, as aforesaid, on the First and Second Respondents' own version, serves to evade the imposition upon the Second Respondent of transfer duty and transfer duty penalties for some twenty two years in accordance with the Transfer Duty Act (if such duty was in all other respects payable). In terms of the Transfer Duty Act, in the normal course of events, transfer duty would have been payable upon each right to acquire transfer, within six months from date of the sale, failing which such duty should attract penalties. It is thus disturbing that the Offending Agreement bore no reference to the 1992 agreement which the First and Second Respondents allege to have lost, as the effect of the Offending Agreement is such that it disguised the true date of the sale which would have avoided the imposition of statutory transfer duty penalties for some twenty two years, if duty was in all other respects payable.

38. One is then faced with the clear non-compliance with Section 15A(1) of the Deeds Registries Act No. 47 of 1947, as read with Regulation 44A promulgated thereunder. In terms of Section 15A(1), a conveyancer who prepares a deed for purposes of registration in the Deeds Registry, and who signs a prescribed certificate on such deed, accepts by virtue of such signing, the responsibility, to the extent prescribed by regulation, for the accuracy of those facts mentioned in such deed.

39. In terms of Regulation 44A, the person who signs the Preparation Certificate under Section 15A(1) bears responsibility for:

39.1. the correctness of all facts stated in the deeds so prepared;

39.2. ensuring that one who signs in a representative capacity on behalf of a company, has the necessary authority for the signing of such document.

40. In the nature of things, such authority is adduced by way of resolution of the board of directors of a company, which conveyancers are duty-bound to hold on file, together with all requisite file documentation, so as to enable the preparation of deeds.

41. In every pack of transfer documents lodged for registration in the Deeds Office, there must always be a signed Power of Attorney to Transfer, which conveys the authority of the transferor in favour of the conveyancer to appear before the Registrar of Deeds and to sign a fresh title deed giving transfer and title of the land to the transferee. Such Power of Attorney to Transfer must of necessity bear a Preparation Certificate under Section 15A(1) of the Act, as must the title deed.

42. *Ex facie* the Power of Attorney to Transfer to be found at paginated page 79 of the papers, prepared by conveyancer Slabbert in accordance with Section 15, as read with Section 15A(1) and Regulation 44A of the Deeds Registries

Act 47 of 1947, the Second Respondent was purportedly duly authorised by resolution of the directors of the Applicant to sign such Power of Attorney to pass Transfer on behalf of the Applicant. Absent a resolution on file by the directors of the Applicant, I find that there was non-compliance with Section 15A(1) as read with regulation 44A.

43. On the evidence presented, there was no resolution of the board of directors of the Applicant, appointing the Second Respondent to so act. Absent such resolution both the Power of Attorney to Transfer as well as the Offending Deed are fatally tainted, which in itself gives merit to the relief sought by the Applicant.

44. There is not much room for a finding on the Second Respondent's version to the effect that he was authorised by the Applicant in the early nineties to deal with its properties, and to the extent that he was so authorised, it is clear from the Replying Affidavit that such authority was terminated by way of the resolution comprising annexure **"RA17"** to the Replying Affidavit, on 24 August 1994 where it was resolved that:

"The resolution of the directors adopted on Friday 6 December 1991 authorising Sydney Rean Booysen and Peter Nicholas Steyn to sign on behalf of the company all transfer documentation, including annexure "C" / Certificates of Provisional Grant of Leasehold, necessary for the registration of the transfer of erven situated in the townships of Mnesi Park, Meadowlands Extension 11 and Meadowlands Extension 12 into the names of the various purchasers, be and it is hereby revoked and cancelled."

Such resolution is signed by the directors at the time, J A Flint and C A van Bosch.

45. Much issue is made by the First and Second Respondents that the same van Bosch who signed a Confirmatory Affidavit to the Founding papers, confirmed that the Second Respondent was at no time authorised to deal with the properties, and by so doing, she had committed perjury. The Applicant adequately explains in the Replying Affidavit that it was only after the Founding Papers were deposed to that it ascertained that the Second Respondent had been authorised to deal with the Applicant's properties in 1991, but at the same time ascertained that such authority was terminated by way of the aforesaid resolution. I therefore do not think that anything turns on van Bosch having confirmed the version that she did in the Founding Papers, as she had clearly acted in error but it is not necessary for me to make any further findings in this regard. At best for the Second Respondent, the discovery of his prior authority and the revocation thereof in 1994, may have left him under the impression that he was authorised, if he was without knowledge of such revocation. In the same vein, Slabbert in the execution of her conveyancing mandate, may have naively operated under the erroneous impression that the Second Respondent was so authorised, but such impression would in no way serve to exonerate the conveyancer from the duties imposed upon her under Section 15A(1) as read with Regulation 44A of the Deeds Registries Act, which she clearly fell foul of. In addition, such naiveté would in no way exonerate the conveyancer from the duty to ensure that where the Applicant was alienating the greater part of its

undertaking, that special resolutions had been passed and registered with CIPC in accordance with Sections 112 and 115 of the Companies Act 71 of 2008.

46. It can only be that *de facto*, the Second Respondent was not authorised at the time of signing of the Power of Attorney to Transfer on behalf of the Applicant or at the time of registration of the Offending Deed, or at the time of execution of the underlying Offending Agreement, to represent and bind the Applicant in the transfer by it of the properties to the First Respondent. By the same line of reason, it can only be that the conveyancers, Olivier & Connor, were not authorised by the Applicant to effect registration of such transfer.

47. The First and Second Respondents raised in heads of argument that the Applicant itself had fallen into de-registration and was only revived by Order of Court some time in 2011, with the result that the properties had become *bona vacantia*. The argument put forward is that the granting of the relief would not be competent as the properties vest in the State by virtue of the Applicant's erstwhile de-registration. I find this argument to be illogical, as by the same line of reason, the transfer of the properties conveyed under the Offending Deed would also have been invalid without steps having been taken for the Applicant's title to be reinstated by the State. In argument, Mr de Koning SC did not pursue this argument and Mr Pretorius SC for the Applicant, pointed out that in terms of ***Peninsula Eye Clinic (Pty) Ltd vs Newlands Surgical Clinic and others (1) SA 381 (WCC)***, reinstatement

under Section 82(4) of the Companies Act 71 of 2008, is retrospectively re-established upon re-registration, but does not validate the acts of the company during the period of deregistration.

48. Mr de Koning SC valiantly argued that I may not reject the version of the First and Second Respondents, relying upon the principles enshrined in:

Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T);

Die* Dros *(*Pty*)* Ltd *&* another *v Telefon Beverages CC & others 2003 (4) SA 207 (C); and

Plascon-Evans Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A).

Mr de Koning SC argued that in line with these cases, if I am not inclined to accept the First and Second Respondent's version and dismiss the application, I should then refer the matter to a trial court.

49. In considering this submission, I have formed the view that no evidence adduced at any trial could ever sanctify and correct the tainted Offending Agreement, which on the First and Second Respondent's own version, is very far removed from the real agreement which the Second Respondent alleges to have existed twenty years prior, as a result of which the Offending Deed could never be sanctified, as it is irretrievably tainted and doomed to perpetual invalidity. There is therefore no purpose served in referring this matter to trial, as the applicant is entitled to the relief that it seeks and has

proved its entitlement thereto, on a balance of probabilities, upon the First and Second Respondent's own version.

50. The only thing left for me to decide is whether or not the relief, as against the Third Respondent is competent, and if so, whether or not to grant same in the form of the main relief sought, alternatively in the form of the alternative relief. I have already set out above the form of the main relief sought. In the alternative to the main relief, I am asked to order that the First Respondent transfers the properties back to the Applicant.

51. In terms of Section 6(1) of the Deeds Registries Act, no registered Deed of Transfer shall be cancelled by a Registrar, except upon an Order of Court. In terms of Section 6(2) of the Act, upon the cancellation of any deed conferring or conveying title to land as provided for in sub-section 1, the deed under which the land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the Registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.

52. Accordingly, were I to grant the main relief, the Offending Deed would be cancelled, resulting in the revival of the prior deed under which the Applicant was the registered owner of the properties in question. In argument, Mr Pretorius SC requested that I grant the main relief, in lieu of the alternative relief.

53. In terms of ***Pillay v Krishna 1946 AD 946 at 955,*** a party alleging payment bears the onus of proving it. The First and Second Respondents have not submitted any proof of payment of the consideration of R150 000.00.

54. The First and Second Respondents' version is palpably implausible, farfetched and clearly untenable in all material respects, so much so that the court is entitled to reject such version, as it did in ***National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA) paragraph 26***.

55. The First and Second Respondents should not have resisted the application, should not have persistently clung to the version that they did, ought to have succumbed to the revocation of its non-existent authority to bind the Applicant, ought to have yielded to the demands made in the initial correspondence, ought to have transferred the properties back to the Applicant without putting the Applicant through its paces in bringing this application to court, with the result that there is merit in the Applicant's request for the award of costs on the scale as between attorney and client, including the costs of two counsel.

56. Accordingly, I make the following Order:

56.1. Interdicting and restraining the Second Respondent from representing to anybody in any way whatsoever, either directly or indirectly, that he represents the Applicant, and/or that he is entitled to act on behalf of the Applicant and/or sign documents on behalf of the Applicant in any capacity and for any purpose whatsoever;

56.2. Setting aside and declaring null and void *ab initio* the purported Agreement of Sale concluded between the Applicant and the Second Respondent dated 19 June 2012 and enclosed to the Applicant's Founding Affidavit as annexure **"DM13"**.

56.3. Deed of Transfer No. T4…… registered by the Third Respondent in the Johannesburg Deeds Office on 23 October 2014 is invalid and the Third Respondent is hereby ordered to effect cancellation thereof in terms of Section 6(1) of the Deeds Registries Act No. 47 of 1937.

56.4. In terms of Section 6(2) of the Act, the Third Respondent is hereby ordered to effect cancellation of all relevant endorsements on all affected deeds evidencing the registration of Deed of Transfer T4…….

56.5. The First and Second Respondents are ordered, jointly and severally, to bear to the costs of the Applicant in relation to this application, on the scale as between attorney and client, including the costs of both senior and junior counsel.

NOCHUMSOHN, G
ACTING JUDGE OF THE HIGH COURT

On behalf of Applicant:	Mr G Pretorius SC
With him:	Mr N Lindeque
Instructed by:	Breytenbach Mostert Skosana Inc
On behalf of First and Second Respondent:	Mr LW de Koning SC
Instructed by:	Mills and Groenewald Attorneys
Date of Hearing:	07 June 2016
Date of Judgment:	10 June 2016