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

**Case number: 66108/2013**

**Date:**

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between:

**CHANGING TIDES 17 (PTY) LTD N.O.**

**APPLICANT**

**And**

**CHRISTO BRIAN COETZEE**

**FIRST RESPONDENT**

**JACOBUS JOHANNES ODENDAAL**

**SECOND RESPONDENT**

**KAREN ODENDAAL**

**THIRD RESPONDENT**

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**JUDGMENT**

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*PRETORIUS J.*

(1) In this application the only issue this court has to decide is the issue of costs. At the hearing of the application a draft order was handed to the court and the parties agreed that this order may be made an order of court, save for the costs.

(2) The second and third respondents were victims of the so-called Brusson scheme, whereby they were defrauded of ownership of their home by Brusson. This matter is similar to a matter which was pending in the Supreme Court of Appeal ("the SCA"). On 24 August 2015 the application was postponed pending the outcome of the appeal in the SCA. On 26 November 2015 the SCA gave judgment. ABSA Bank, the applicant in that matter, approached the Constitutional Court for leave to appeal, which application was dismissed on 21 October 2016.

(3) It is a fact that the proposed draft order was agreed upon by the parties after the SCA and Constitutional Court judgments were given. The last date was thus 21 October 2016, when it became clear that the two respondents were defrauded and that the law had been settled in this regard.

(4) The applicant's counsel referred to **Kruger Bros and Wasserman v Ruskin**<sup>1</sup> where Innes J held:

*"the rule of our law is that all costs - unless expressly otherwise enacted - are in the discretion of the Judge. His discretion must be judicially exercised; but it cannot be challenged, taken alone and apart from the main order, without his permission."*

(5) The court has a discretion to award costs, although the general rule is that costs follow the event. The applicant's argument is that the second and third respondents throughout the opposition of the application tendered the balance of the money that they had received. According to the applicant they had received the amount of R259 000 during February 2010 and that they had repaid R86

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<sup>1</sup> 1918 AD 63 at 69

456.55 at this stage. During argument it was clear that the second and third respondents would still pay the money to the applicant, if so requested.

(6) The further argument by the applicant is that not only will they receive their house back, but will have been enriched with the amount of R172 543.45. The last argument is that the Legal Resources Centre acted for the second and third respondents and that they are not exposed to any legal costs.

(7) The applicant did not afford any reason as to why the application was not withdrawn or removed from the roll as soon as the SCA judgment, 1918 AD 63 at 69 confirmed by the Constitutional Court on 21 October 2016, became available. More than a year has gone by, without the applicant conceding that this matter falls squarely in the ambit of that judgment and cannot proceed.

(8) In these circumstances, where I have considered all the facts placed before me I find that the applicant, due to the reasons set out above, is liable for costs.

(9) In the result I make the draft order, attached to this judgment marked "X", an order of court.

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Judge C Pretorius

Case number        66108/2013

Matter heard on    8 November 2017

For the Applicant    Adv Oosthuizen  
Instructed by Velile Tinto & Associates Inc

For the Respondent Adv O Ben-zeev  
Instructed by        The Legal Resources Centre

Date of Judgment 17/11/2017

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

**Case no: 66108/2013**

*PRETORIA, 6 November 2017*

*BEFORE THE HONOURABLE JUDGE PRETORIUS*

In the matter between

**CHANGING TIDES 17 (PROPRIETARY) LIMITED N.O.**

Applicant

and

**CHRISTO BRIAN COETZEE**

First Respondent

I.D.: [...]

(Married out of community of property)

**JACOBUS JOHANNES ODENDAAL**

Second Respondent

**KAREN ODENDAAL**

Third Respondent

**~~DRAFT~~ ORDER**

Having heard counsel, read the documents filed of record and having considered the matter the following order is made:

1. Directing that the following parties be joined in these proceedings as Fourth to the Ninth Respondents in the main application:

- 1.1. The Registrar of Deeds, Johannesburg (as Fourth Respondent);
  - 1.2. The liquidators of Brusson's estate (as Fifth to Eight Respondents);
    - 1.2.1. Cloete Cornelia Maria N.O. (Fifth Respondent)
    - 1.2.2. Kaplan Harry N.O. (Sixth Respondent)
    - 1.2.3. De Oliveira Anna Paula N.O. (Seventh Respondent)
    - 1.2.4. Poopedi Sophie Mmapula N.O. (Eight Respondent); and
  - 1.3. South African Home Loans Pty Limited (as Ninth Respondent);
2. Declaring the written agreements between the First, Second and Third Respondents and Brusson (Pty) Ltd null and void.
3. Declaring that the mortgage bond numbered B3617/2010 in respect of Erf [...], Roseacre Ext 3 Township, Johannesburg, Registration Division IR, Province of Gauteng is invalid, unlawful and of no force or effect.
4. Setting aside the mortgage bond numbered B3617/2010 in respect of Erf [...], Roseacre Ext 3 Township, Johannesburg, Registration Division IR, Province of Gauteng.
5. Ordering the Fourth Respondent, the Registrar of Deeds, Johannesburg to cancel the mortgage bond numbered B3617/2010 in favour of South African Home Loans in respect of Erf [...], Roseacre Ext 3 Township, Johannesburg, Registration Division IR, Province of Gauteng.
6. Declaring that the Second and Third Respondents are entitled to restitution of ownership of the property situated at Erf [...] Roseacre Extension 3, Johannesburg.
7. Ordering the Fourth Respondent, the Registrar of Deeds, Johannesburg to cancel the title deed numbered T4456/2010 in respect of Erf [...], Roseacre Ext 3 Township, Johannesburg, Registration Division IR, Province of Gauteng, and to cancel the rights accorded to the first respondent (Coetzee, Christo Brian) by virtue thereof.
8. Ordering the Fourth Respondent, the Registrar of Deeds, Johannesburg to revive the title deed in the names of the Second and Third Respondents (Jacobus Johannes Odendaal and Karen Odendaal) in terms of section 6(2) of the Deeds Registries Act 47 of 1937.
9. Directing the Applicant to pay the costs of this application.

BY ORDER OF COURT  
THE REGISTRAR