(2) OF INTEREST TO OTHER

20/05/2013 [signature]

DATE SIGNATURE

IN THE NORTH GAUTENG HIGH COURT – PRETORIA

(REPUBLIC OF SOUTH AFRICA)

DATE: 20 May 2013

CASE NO: 59771/2012

In the matter between:

JACOBUS FRANCOIS JANSEN N.O.	**1st APPLICANT**
CORNELIA JOANA JANSEN N.O	**2nd APPLICANT**
CORNELIUS JOHANNES PETRUS GERHARDUS MALAN N.O.	**3rd APPLICANT**
JACOBUS MARTHINUS BROODERYK N.O. (in their capacities as the duly authorised appointed trustees of the JDH EIENDOMSTRUST (No IT1465/2010	**4th APPLICANT**

and

RINGWOOD INVESTMENTS 87 CC	**1st RESPONDENT**
VAN RENSBURG'S ATTORNEYS, ROODEPOORT	**2nd RESPONDENT**

N V KHUMALO AJ

INTRODUCTION

[1] The Applicants, as the duly authorised trustees of the JDH Eiendomstrust ("the trust") launched an Application seeking an order:-

[1.1] declaring that the sale agreement concluded between the Trust and the 1st Respondent is void *ab initio* and unenforcable;

[1.2] that the 2nd Respondent is to pay to the Applicants the sum of R2 000,000.00 together with any and/or all interest that may have accrued upon the aforesaid amount since its deposit with the 2nd Respondent on behalf of the trust and/or investment pursuant to the conclusion of the purported sale agreement between the Applicant and 1st Respondent;

[1.3] that the costs of the urgent Application served by the 1st to 4th Applicants under case number 56377/2012 be paid by the 1st Respondent;

[1.4] Further or alternative relief.

[2] The relief sought as against the 2nd Respondent, was said to be for only in so far as they still held the sum of R2 000,000.00 that forms the subject matter of this Application in their trust account in terms of an undertaking they provided on behalf of the 1st Respondents to the Applicants prior to the institution of the Application.

BACKGROUND FACTS

[3] On 12 June 2012 First Applicant in his capacity as a trustee concluded the sale agreement ("the agreement") with the 1st Respondent purchasing an immovable property described as Portion 8 of the Farm Goedenhoop 83, Registration Division KR, Province of Limpopo ('the property") for a purchase price of R13 500,000.00.

[4] The sale was subject to a payment of a deposit of R2 000,000.00 and a suspensive condition, *inter alia,* that the trust is able to raise a loan of not less than R11 500.000.00 within 30 days of signature of the agreement.

[5] The agreement also provided in Clause 6.2 an option for cancellation by both parties in the event of default or repudiation of the agreement by either party. If cancellation is at the instance of the seller, all amounts paid by or on behalf of the purchaser were to be forfeited unless the seller elects to claim damages in lieu of such forfeiture whereby they will be entitled to hold such amounts pending determination of the amount of the damages by agreement, or order of court.

[6] The deposit was duly paid to 2nd Respondent, 1st Respondent's erstwhile attorney that was responsible for registering the transfer. The suspensive condition was however not fulfilled within the time stipulated and Applicant's endeavours to secure the loan on 18th and 30 July 2012 post the expiry of the stipulated period failed to yield any positive results. The receiver of revenue did not agree to treat the transaction as a zero rated vat transaction as well

[7] 1st Respondent subsequently offered to extend the period of the suspensive condition subject to Applicants agreeing that the R1 000 000.00 of the deposit paid will be forfeited in the event that the suspensive condition is not fulfilled during the extended period.

[8] The Applicants did not acquiesce to the demand and the request for an extension was declined.

[9] However, 1st Respondent refused that the deposit be paid back to the Applicants on the ground that the Applicant has repudiated the contract.

[10] 2nd Respondent subsequently indicated that he will proceed to pay out to 1st Respondent a portion or the whole of the deposit of R2,000 000.00 in lieu of expenses, wasted costs and damages, resulting from the repudiation unless Applicants approach the Honourable Court to obtain an order as *per* the relief sought in this Application.

[11] As a result Applicants instituted an urgent Application that was later withdrawn on agreement by the parties that the normal course of motion procedure be followed and 2nd Respondent furnish Applicants with an undertaking not to pay out the deposit except by order of court.

APPLICATION

[12] Applicant is seeking relief as prayed for on the ground that:

[12.1] the agreement is void *ab initio* since the suspensive conditions under the agreement were not fulfilled within the agreed time period and neither of the parties waived compliance with the suspensive condition prior to the lapse of the 30 day period; alternatively,

[12.2] the agreement is not enforceable for the reasons that:

[12.2.1] in terms of the trust's deed all necessary actions and authority of the trustees was to be conducted by way of a joint resolution.

[12.2.2] the trust never adopted a resolution in writing authorising the First Applicant to conclude the agreement.

[12.2.3] neither of the non-signatory trustees signed authorisation to the signatory trustee authorising the purchase of the property.

[12.2.4] the agreement is struck with illegality due to non-compliance with the requirements of the Alienation of Land Act ("the Act).

[13] 1st Respondent filed in its answering affidavit, a counter-claim for an order declaring:-

[13.1] that the sale agreement was duly cancelled on 1 August 2012 or alternatively that the agreement is cancelled;

[13.2] that the deposit together with the interest accrued be forfeited to the 1st Respondent in accordance with clause 6.2 of the agreement, alternatively, that First Respondent is entitled to hold the amount pending determination of damages in an action that First Respondent was to institute within 30 days of this court's order in the main and counter application; alternatively

[13.3] that the 1st Respondent is entitled to hold the deposit pending determination of the amount of damages;

[13.3] that 1st Applicant pays the amount in his personal capacity with *mora* interest;

[13.4] the costs of this Application including that of an urgent application be paid by the Applicants jointly and severally.

[14] Whilst denying the allegations in Applicant's founding affidavit, specifically that:

[14.1] <u>the agreement was purportedly concluded</u>, stating that it was a duly executed and properly signed agreement, but if it is found to be invalid the Applicant is not entitled and is prohibited from relying on the invalidity on the basis of the rule in *pari delicto potior est condictio possidentis*,

[14.2] <u>Applicant is entitled to be paid back the deposit</u>, stating that the deposit has to be forfeited to it, in accordance with clause 6.2.1 of the agreement, either as an agreed amount to be forfeited to it or pre-empted damages pursuant to the breach of the agreement by the Applicant and the consequent cancellation on 1 August 2012.

[14.3] <u>the agreement was void or void *ab initio* due to the suspensive conditions not being fulfilled</u>, stating that it was through conduct amounting to repudiation of the agreement by the trust, as such 1st Respondent was entitled to cancel the contract, the trust was remiss in preparing and submitting its application for the loan which was delayed and done after the period of the suspensive condition as a result declined.

[14.4] <u>it is a requirement in law that a trustee be authorised by resolution in writing to conclude a written agreement in respect of land,</u> stating that First Applicant acted in his capacity as a duly authorised trustee in terms of his letters of authority by the Master and not as an agent contemplated in Section 2 (1) of the Alienation of Land Act 68 of 1981 ("the Act"). So, no written authority by the trust to First Applicant was required.

[14.5] Also adding that no evidence is submitted that First Applicant acted without the consent of the majority of the trustees and *ex facie* the document he appears to have been duly authorised, if point upheld, 1st Respondent reserves its right to claim from First Applicant in his personal capacity because of his apparent misrepresentation.

[15] In support of its counter-application 1st Respondent alleges that it has a real and valid apprehension that in the event of the agreement not being honoured by the trust and the forfeiture clause not coming into effect, it will suffer irreparable harm in excess of R2 890 000.00 in respect of its inability, due to the conclusion of the written agreement of sale, to deliver 1700 tons of grass and hay contracted to its neighbours and Driehoek Voe.

ISSUES TO BE DETERMINED

[16] The principal issue to be ascertained is the validity of the agreement, that is, if First Applicant, who acted without the written authority of the other trustees entered into a valid contract of sale of land binding the trust, establishing as questioned by 1st Respondent if it is a requirement in law that a trustee be authorised by resolution in writing to conclude a written agreement in respect of land.

[17] If it is found that a valid contract have been concluded the next enquiry is whether it became void *ab initio* due to the non-fulfilment of the suspensive condition entitling the Applicants then to the deposit or Applicant's non-fulfilment resulted into a breach of contract in terms of clause 6.2 of the agreement justifying a forfeiture of the deposit and compensation of 1st Respondent for damages resulting from such breach.

[18] If it is found that no valid contract was entered into, then the enquiry that follows is to ascertain if the *pari delicto potior est condictio possidentis* rule ("the pari delicto rule") is applicable against the trust as alleged by the 1st Respondent and if not, then if the First Applicant can be held personally liable for his conduct as trustee.

APPLICABLE LAW

[19] Section 2 (1) of the Alienation of land Act 69 of 1981, ("the Act") provides that:

> "No alienation of land shall, subject to the provisions of section 28, be of force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents on their written authority."

[20] Therefore basically, for a sale of land to be of force and effect there must be a

(1) A deed of alienation (agreement embodied in a document)
(2) Signed by the parties, that is buyer and seller, alternatively
(3) Signed by an agent of each of the parties whom they have authorised in writing.

[21] Where one of the parties to a deed of alienation is a trust, the signing of the agreement should be by all the trustees of the trust (as in accordance with the letters of authority at the time of the conclusion of the agreement), unless the trust instrument provides otherwise. This principle is said to be consequent from the nature of the trustees' joint ownership of the trust property and since co-owners have to act jointly, trustees also act jointly for the trust to be bound by their acts. See *Land and Agricultural Bank of South Africa v Parker and Others* 2004 SA (SCA) 77 at 85C, Nugent J also in *Luppacchini No & Another v Minister of Safety and Security & Another* 2010 (6) SA 457 clarifies the trust's capacity to transact by stating that:

> "by the nature of the office of the trustee the control and administration of the trust property vests in each trustee individually. It follows that where there is more than one trustee, they must act jointly unless the trust instrument provides otherwise. And because they have individual interests all must necessarily join in litigation concerning the affairs of the trust (though it seems that one trustee might authorise another to sue in his or her own name)."

[22] The interest of the trustees in the trust property is even-handed as ownership vests in them equally. Therefore each of the trustees (as authorised by the letters of authority issued by the master) has a legal right to sign the agreement but such right can only be exercised jointly with the other trustees for it to have any legal effect unless a trustee is the lone holder of letters of authority in terms of that particular trust (if it ever happens).

[23] In terms of the law of agency, a trustee can give authority to a co- trustee to act on his or her behalf as per Luppacchini statement that 'though it seems one trustee might authorise another to sue in his or her own name'. In the alienation of immovable property, the Act requires the authority to a trustee to act as an agent of a co-trustee/s to be in writing and by each individual trustee, for a valid deed to be concluded with a trust as one of the parties. As it has been already

indicated above, due to its inherent make up, a trust lacks a legal persona and acts through its trustees jointly.

[24] The authority can also be in a form of a resolution signed by all the trustees. Oral authority would be tantamount to no authority at all, see *Thorpe v Trittenwein & Another* 2007 (2) SA 172 (SCA) at 178G, and the written authority should have existed at the time when the agreement was signed, as subsequent satisfaction of authority in writing would be of no force or effect in that it would not rectify an agreement that was void *ab initio* for lack of authority. The situation is determined by the status quo at the time of signing of the agreement. Ratification ipso facto as in the instance of a company, is not possible. See *Thorpe* at 176D.

[25] In the instance that the trust deed stipulates the conditions under which the trustees are to transact and/or administer and control the trust property, the validity of their conduct and authority would be determined in terms of the provisions of the trust deed. If it sets out that authority be granted by resolution of a certain number of trustees at a given time, unless such a resolution is signed by the number of trustees mentioned, (signing of which cannot be delegated) it would be of no force or effect. See *Land and Agricultural Bank of South Africa v Parker & Others* 2005 (2) SA 77 SCA at 84B.

[26] Applicant's Counsel, Mr van der Berg, indicated that his main argument is premised on the fact that the sale agreement signed by the First Applicant and 1st Respondent did not comply with the provisions of Section 2 (1) of the Act as in the matter of *Thorpe,* precisely the requirement that the agreement to alienate land be signed by the parties or their agents with written authority. Accordingly he submitted that in a sense it will not be necessary then to continue with the other issues raised by the 1st Respondent as the agreement is void *ab initio* for the want of such compliance. As indicated the 1st Respondent raised a number of defences and some of them will not carry any weight if the agreement is found to be of no force or effect.

[27] Mr van der Berg argued that in the same way as in Thorpe, First Applicant did not have authority in writing from the other three trustees at the time of signing the sale agreement and therefore his action could not bind the trust. Mr Sieberhagen, 1st Respondent's Counsel's counter argument on this point was that First Applicant did not need any authority from the other trustees, he was acting in terms of the letter of authority granted to him by the Master as trustee not as an agent of his co-trustees, which argument is way off the mark and illustrate Counsel's failure to appreciate the fundamental dimensions of the operation of a trust as well as its purpose. It ignores the vital principle of trust law pronounced in, *inter alia,* the case of *Landbou a*nd in Lupp*acchini* where it was confirmed that the trust property vests in all the trustees equally who then therefore all need to act jointly as far as such trust property is concerned unless

the other trustees have in writing delegated their authority to the signatory trustee. Applicant's Counsel correctly referred here to Scott J statement in *Thorpe* that:

> "Whether one regards Thorpe as having acted as a functionary of the trust and in that sense a principal, or as both a principal (as co-trustee) and agent of the other co-trustees, the result in my view must be the same. Given the object of the section, it must be construed, I think, as being applicable on either basis. In other words, the reference in the section to `agents' must be understood as including a trustee who may in a sense be said to sign as a principal (ie as trust), but whose power to bind the trust is nonetheless dependent upon the authority of the co-trustees."

[28] 1st Respondent's Counsel's argument seems not to be able to discern the distinction between being appointed to the office of trust as trustee (by being issued with letters of authority by the master) and the method of control and administration of the assets of the trust that is determined by the trust deed alternatively by the law that is authoritarian and to be undertaken by all the trustees in office together on whom the ownership of the assets vests. The letters of authority from the master bear the names of 4 trustees and cannot be used, as alleged by Respondent, as proof for a trustee to can act alone and bind the trust minus a written resolution.

[29] Applicant's Counsel also went further and pointed out during the presentation of his submission that in terms of the trust's deed:

[29.1] there should at all times be a minimum of two trustees in office, par 4.2.

[29.2] the required quorum for any meeting of the trustees shall be the majority of the number of trustees in office, par 18.8.

[29.3] a resolution that has been reduced to writing signed by all the trustees will have the same authority as a resolution taken in a properly constituted meeting, par 18.5.

[29.4] the trustees can authorise one or two of their co trustees to sign on behalf of the other trustees any documentation necessary for the administration or control of the trust or conclude any contract in respect of the trust property, and any resolution certified as a true extract from the minutes of the original resolution of the trustees will at all times have the effect of a resolution signed by all the trustees, par 18.8.

In essence he regarded the provisions to prescribe that the necessary actions and authority of the trustees was to be conducted by way of a joint resolution. I

agree with Counsel. In contradiction with the provisions of the trust there was no resolution in writing adopted by the trust authorising the First Applicant to conclude the sale agreement nor was there a signed authorisation by the non-signatory trustees to the signatory trustee to sign the agreement on their behalf.

[30] So, it was incomprehensible when Respondent's Counsel's persisted with his argument even though the trust deed does not have provisions that sanction the acts of a lone trustee to bind and represent the trust. Actually the deed of trust required a minimum number of 2 trustees to be in office which requirement on its own is a capacity defining condition that lays down a prerequisite of a number of trustees capacitated to act for the trust for the estate to be bound. See *Nieuwoudt and Another NNO v Vrystaat Mielies (Edms) BPK* 2004 (3) SA 486 SCA and *Pullicchin.* Respondent's Counsel, astoundingly was not troubled by his line of reasoning but continued to misquote the following passage in *Thorpe* on para 9, by not reading the part that I have underlined that is very important to the debate referenced:-

> "The assets and liabilities constituting the trust vest in the trustees and it is they who administer them. They are therefore not the agents of the trust, nor for that matter of the beneficiaries (*Hoosen and Others NNO v Deedat and Others* 1999 (4) SA 425 (SCA) ([1999] 4 All SA 139) at para [21]). <u>It is moreover trite that unless the trust deed provides otherwise, trustees must act jointly</u>."

I therefore find no basis for First Respondent's contention that First Applicant could and was acting as the Principal, when the trust deed does not provide that a trustee acting alone could bind the trust.

[31] In that instance the sale agreement that First Applicant concluded with the 1st Respondent was void *ab initio* for failure to comply with Section 2 (1) of the Act in that it was not signed by the purchaser (that is the trust, acting through its trustees jointly or by resolution) or by an agent with their written authority. So the agreement never came into existence and therefore there cannot be repudiation or cancellation of a non-existent agreement as illegal contracts cannot be enforced. 'It is a fundamental principle of law that a thing done contrary to the law is void and of no effect.' Per Innes CJ in *Schierhout v Minister of Justice* 1926 AD 99 at 109.' 1st Respondent's counterclaim should accordingly fail.

[32] Mr Sieberhagen then argued for the matter to be referred to oral evidence on the basis that there is a dispute on whether First Applicant was indeed not authorised to sign the agreement due to the fact that he has appended his signature on the document as a duly authorised representative of the trust. He argued that it would therefore be important to be able to make out from the evidence of the other trustees if he was authorised as this fact is not denied in the affidavit. Oral admission by the other trustees that the First Applicant had

authority will not assist the First Respondent in trying to enforce the agreement as it is indicated that in terms of the Act there should be a written authority which in terms of the trust deed can be a signed resolution or by each of the trustees as already pointed out in the early part of this judgment. See also *Thorpe*. The key question is not whether First Applicant had authority or not a fact that is not denied by the Applicants, but if such authority was in writing, in compliance with the provisions of the Act. There is no dispute with respect to the latter question. First Respondent has failed to prove that such written authority in fact existed and misconstrued the written authority as prescribed by the Act to be that of the letters of executorship therefore referral to oral evidence would not assist it. There is no fact that substantiate that allegation that is sustainable thus no genuine dispute of fact exists. *In Plascon-Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) 634-635,* uncreditworthy denials or allegations that would not impede the grant of relief that the Court is justified in rejecting them merely on the papers were extended to include those that are so far-fetched or clearly untenable.

[33] Mr Sieberhagen's further argument was that if the agreement is found to be invalid, the *pari delictum* rule should apply because First Applicant acted with the full knowledge of the other Applicants who actually tried to comply with the provisions of the agreement, accordingly showing their consent to the agreement. The claimed rule prescribes that a party should not obtain satisfaction from a court of law with where his own conduct is wrongful, wherefore Applicant should be denied the relief sought. In the matter of *Hitler Adolf Kloukow v Michael Boyton Sullivan,* (410/2004) [2005] ZASCA 99 (29 September 2005) the Supreme Court of Appeal found that once the Applicant has alleged that Respondent was in possession of the property sold and the money paid, the Respondent then carries the burden to show that even though he keeps both he had not been unjustly enriched. It is also important to note that our courts have the power or a discretion to relax the rule in the interests of equity as it has been recognised that the rule sometimes result in inequitable outcomes. First Respondent has not put forward facts that prove that by keeping both the property and the money it would not be enriched and therefore cannot find any solace from the rule. 1st Respondent as pointed out by Mr Vorster, the other Counsel for Applicants, never relinquished possession and the occupation of the property and was as a result not hindered or prevented from complying with the contracts that it alleges were in place at the time. It remained in control of the property and could have used it as it deems fit. He therefore did not show any reason that entitles him to keep the deposit as well.

[34] In terms of Section 28 (1) (b) the alienator may in addition recover from the alienee:

(i) A reasonable compensation for the occupation, use or enjoyment the alienee may have had of the land;

(ii) Compensation for any damage caused intentionally or negligently to the land by the alienee or any person for the actions of whom the alienee may be liable.

[35] None of the above featured in this transaction and therefore there is no justification for the 1st and 2nd Respondent to refuse to pay back the full amount of the deposit together with interest that has accrued to Applicant's deposit.

[36] It is 1st Respondent's contention that in the instance of the court finding that First Applicant action could not bind the trust, he should be held liable in his personal capacity to pay the R2 000,000.00 plus *mora* interest for having falsely represented as reflected in the sale agreement under his signature that he is duly authorised whilst he was not. Having recognised at the end of his argument that First Applicant was before court in his representative capacity as trustee and not in his personal capacity and that this claim can therefore not be sustained without impleading him in his personal capacity as a party, Mr Siebengahn then and there as his final submission applied for the joinder of the First Applicant in his personal capacity in the matter.

[37] As already mentioned, at the time of the joinder Application, Mr Siebengahn had dealt with all the issues in this matter including the claim against First Applicant in his personal capacity that is based on allegations of misrepresentation but for the joinder. First Applicant, in his personal capacity is not a party to this matter and was legally not before court, he is together with his co Applicants before court as representatives of the trust, which then posed a problem for the 1st Respondent. Counsel in attendance for the Applicants was representing them in their representative capacity as trustees and not in their personal capacities and therefore could not and was not expected to deal with the Application for joinder of the Applicant in his personal capacity raised from the bar. Counsel was not authorised or instructed to act for First Applicant in his individual capacity. It was therefore inappropriate for 1st Respondent to bring the Application without following the right process or procedure of Notice and service upon First Applicant in his personal capacity in order to afford First Applicant an opportunity to respond to the Application and seek representation if he so wishes. There was no excuse for 1st Respondent to resort to such last minute manoeuvres as it has been aware of its claim against the First Applicant in his personal capacity since 14 November 2012 when it delivered its Answering Affidavit that constituted such a claim. There was ample time for 1st Respondent to serve the appropriate notice as directed by s 6 (7) and s 6 (11) of the Supreme Court Act and Rule 10 (3) of the Uniform Rules of the High Court. Therefore the Application launched from the bar, without proper notice or process followed cannot be considered by the court.

[38] 1st Respondent has in any case deferred to a later date the claim for damages against the trust that he alleges to have suffered as a result of the purported

agreement. The relief sought therein is tantamount to what 1st Respondent is seeking against the First Applicant, so First Applicant can be sued in his personal capacity together with the trust in that subsequent litigation. 1st Respondent is not barred from any future institution of proceedings against the First Applicant in his personal capacity, in that instance his claim is not compromised nor is it prejudiced by a refusal by this court to consider the Application. 1st Respondent's Counsel did not in any case indicate if any prejudice will be suffered if application for joinder is not considered nor did he offer an explanation or circumstances that would justify not following the right procedure or apply for condonation for not adhering to the rules of procedure as applicable.

[39] I therefore cannot find any justification for allowing deviation from the rules and the launching of the Application for joinder from the bar without the appropriate notice being served on the affected party. The court will be perpetuating an injustice and certainly not acting in the interest of justice if the Application is considered.

[40] The parties have submitted that I should also decide upon the issue of costs that was incurred in the urgent application that was brought, according to Applicants prior to the 2nd Respondent undertaking to keep the deposit in its trust Account until the matter is finally adjudicated upon by the court.

[41] The Applicants brought the urgent Application under case: 56377/12, seeking an interdict to prevent the 2nd Respondent from paying it over to 1st Respondent.

[42] It is Applicant's contention that the costs of the Application was incurred due to 2nd Respondent's refusal at the instance of the 1st Respondent, to pay back the deposit that it alleges was to be forfeited as compensation for 1st Respondent's unproven damages and to furnish Applicants with an undertaking that they will not deal with the money pending finalisation of matter that Applicants demanded on 20 September 2012, before launching the urgent Application.

[43] Instead of furnishing Applicants with an undertaking 1st Respondent's erstwhile attorneys advised Applicant's attorneys on 21 September 2012 that if they are not in receipt of Applicant's Application within 5 days, they will proceed to pay over the deposit to the 1st Respondent. As a result Applicant launched the urgent Application.

[44] First Respondent then furnished the Applicant with the undertaking with a condition that the urgent Application is withdrawn. It was therefore at the behest of 1st Respondent that the urgent Application was launched and later withdrawn, consequently, it must carry the liability of the costs incurred thereby. Seeking legal proceedings to be launched by the Applicant as a necessary condition to the undertaking led to a wasteful and expensive expenditure to be borne by the Applicant.

[45] Under the circumstances I hereby make the following order:-

[44.1] 1st Respondent's counterclaim is dismissed with costs;

[44.2] 1st Respondent's Application for joinder of First Applicant in his personal capacity is struck off the roll.

[44.3] the sale agreement purportedly concluded between the Trust and the 1st Respondent on 12 June 2012 is void *ab initio*;

[44.4] the 2nd Respondent is ordered to pay to the Applicants the sum of R2 000,000.00 together with any and/or all interest that may have accrued upon the aforesaid amount since the deposit was paid to the 2nd Respondent on behalf of the trust and/or investment by the 2nd Respondent of the aforesaid sum pursuant to the conclusion of the void sale agreement between the Applicant and 1st Respondent.

[44.5] 1st Respondent is ordered to pay the costs of the Application.

[44.6] 1st Respondent; is also to pay the costs of the urgent Application served by the 1st to 4th Applicants under case number 56377/2012.

N V KHUMALO
ACTING JUDGE OF THE HIGH COURT

Counsel for 1st Respondent:	**P Sieberhagen**
Instructed by:	**Klinkenberg Incorporated**
Counsel for Applicants:	**J P van der Berg & Vorster**
Instructed by:	**Natasha van Rooyen Attorneys**