

Gauteng High Court delivers judgement on sale of immovable property that may hold serious implications for certainty of property rights

On the 2nd of October 2025, Judge Nyati delivered a judgement in the Gauteng High Court in the matter of Dhlomo v De Klerk and the Minister of Trade, Industry and Competition regarding the requirement in the Alienation of Land Act, no 68 of 1981 that any sale of land must be in writing and signed by the parties. The Act requires that: a written sale agreement must include all “material terms”, incorporating both –

- Essential terms, which must set out the identity of the parties to the contract, the identity of the land sold, and the amount of the sale price; and
- Any other term that is material ...and this is determined with reference to its effect on the rights and obligations of the parties.

The Judge ruled in the Dhlomo v De Klerk matter, that this requirement discriminated against vulnerable purchasers and was inconsistent with the rights enshrined in the Constitution of access to housing, dignity and equality and was therefore invalid.

This judgement holds serious implications for our deeds registration system and for security of title and will likely lead to lots of litigation.

The matter has been referred to the Constitutional Court for confirmation. Should the Constitutional court confirm this judgement, mere oral agreements will be being permitted for the sale of land. The enforcement of verbal agreements can be very problematic, because it may end up being the word of one person against that of another.

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