No formalities are required for forming valid contracts in South African law. That is the general principle. If all other prerequisites for contractual validity are complied with, the contracting parties can express their intentions in any form.\(^1\) There are, however, two exceptions to this general principle. The agreement in question (the sale agreement) exemplifies one such exception: for particular categories of contracts, the law requires contracting parties’ intentions to be expressed in specific forms.\(^2\) Non-compliance with these forms will usually render the relevant contracts void \textit{ab initio} and of no force or effect, meaning that any rights or duties in respect of such contracts are neither incurred by nor binding upon the contracting parties.\(^3\) The object of the sale agreement was a piece of land situated in South Africa (SA). Sales of land in SA are subject to the provisions of the Alienation of Land Act\(^4\) (the Act). In relation to the validity or otherwise of the sale agreement, the following issues will be determined:

i. Whether, for the purposes of section 2(1) of the Act, it is sufficient that purchaser two orally authorised purchaser one to sign the written sale agreement on his behalf.

ii. If not, whether the sale agreement is void \textit{ab initio} and of no force or effect.

iii. If so, whether the seller, nevertheless, has any remedies at his disposal to legally enforce the sale agreement.

It will be argued that the sale agreement is void \textit{ab initio} and of no force or effect for wanting compliance with section 2(1)’s written authorisation requirement, and that, currently, it can by no means be legally enforced.

Section 2(1) prescribes that “no alienation of land after the commencement of this section shall…be of any force or effect unless it is \textit{contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority}.” As affirmed in \textit{Philmatt (Pty) Ltd v Mosselbank Developments CC},\(^5\) the public interest objectives of imposing these formalities are to prevent uncertainties, malpractices and unnecessary litigation. Under this section, ‘alienation’ includes, \textit{inter alia}, sale;\(^6\) ‘signed’ is interpreted as making a mark, writing one’s full name, or initialling;\(^7\)

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2 Ibid.
3 Ibid at 160; \textit{Commissioner for Inland Revenue v Insolvent Estate Botha t/a ‘Trio Culture’} 1990 2 SA 548 (A) at 11.
4 Act 68 of 1981 (the Act).
5 1996 2 SA 15 (A).
6 Section 1 of the Act.
and ‘agent’ means the representative of a principal who had the authority to contract for the sale himself.\(^8\) Notably, this section is not applicable to land sold on auction.\(^9\)

Essentially, section 2(1) requires both alienators and alienees to reduce their alienation agreements to written documents, which must then be signed by them.\(^10\) If there are two or more alienators and/or alienees in respect of a single alienation, all such persons must sign the document.\(^11\) If any alienator and/or alinee is unable to sign it himself, he may appoint another person (an agent) to sign it on his behalf in a representative capacity, provided that he has given his agent written authorisation to this effect and that his agent is knowledgeable of such written authorisation when the alienation agreement is being concluded, although the agent need not have the written authorisation on her person at this point in time.\(^12\)

The alienator and/or alinee is not required to sign the written authorisation, or identify the agent by name therein.\(^13\) Moreover, the type of writing and documentation that encompasses the authorisation is inconsequential.\(^14\) Regarding oral authorisation, in Jansen NO and Others v Ringwood Investments\(^15\) it was stated that this “would be tantamount to no authority at all”.

Section 2(1) and Thorpe v Trittenwein\(^16\) make it plain that non-compliance with this section renders alienation agreements void ab initio and of no force or effect.\(^17\) Since the formally documented alienation is integral to the creation of the obligations therein, such alienation is itself the parties’ agreement rather than evidence of that agreement’s existence. Consequently, when the alienation agreement falls short of the prescribed formalities in section 2(1), rectification is impossible, as no obligations are created; thus there is nothing to rectify.\(^18\) It seems that the Act will only recognise alienation agreements that are non-compliant with section 2(1) as valid ab initio where all alienators and alinee have rendered full performance in respect of such agreements.\(^19\) The rationale here

\(^8\) Northview Shopping Centre (Pty) Ltd v Revelas Properties Johannesburg CC and Another [2010] ZASCA 16 para 7.
\(^9\) Section 3(1) of the Act.
\(^10\) Myburgh op cit note 7 at 79-80.
\(^11\) D’Arcy v Blackburn, Jeffereys & Thorpe Estate Agency 1985 2 SA 178 (E).
\(^12\) Gugu and Another v Zongwana and Others [2014] 1 All SA 203 para 27; Jansen NO and Others v Ringwood Investments 87 CC [2013] ZAGPPHC 129 para 24.
\(^13\) Van der Merwe v Dssm Boerdery BK 1991 2 SA 320 (T).
\(^14\) Hugo v Gross 1989 1 SA 154 (C).
\(^15\) Jansen supra note 12 para 24.
\(^16\) [2006] SCA 30 para 15.
\(^17\) Section 2(1) of the Act.
\(^18\) Milner Street Properties (Pty) Ltd v Eckstein Properties (Pty) Ltd 2001 4 SA 1315 (SCA) para 26; Thorpe supra note 16 para 16.
\(^19\) Section 28(2) of the Act.
being that formalities are imposed to foster certainty in performance, and, therefore, they become obsolete once all the relevant parties have rendered full performance.\textsuperscript{20}

Presently, South African law, unlike other civilian and common law jurisdictions, does not appear to prescribe enforcement remedies in the context of agreements that are void \textit{ab initio} and of no force or effect for non-compliance with statutory formalities, unless, possibly, where there is third party involvement.\textsuperscript{21} As a general rule in this regard, the defence of estoppel, for instance, will not succeed where the law prohibits agreements because they are illegal, \textit{ultra vires} or formally non-compliant.\textsuperscript{22} In \textit{Pillay v Shaik},\textsuperscript{23} however, the Supreme Court of Appeal extended the application of the reasonable reliance doctrine to situations of non-compliance with prescribed modes of acceptance.\textsuperscript{24} To a large extent, the decision in this case tends to foreshadow a willingness on the judiciary’s part to extend the reasonable reliance doctrine to novel situations, particularly those, such as \textit{Pillay} (supra) and the present matter, in which contracting parties have been prejudiced by being unconscionably exploited by their counterparts.\textsuperscript{25} It is hoped that this same logic will set in motion considerations for the enforcement of agreements that fail to meet section 2(1)’s required formalities,\textsuperscript{26} especially since such logic is in accordance with one of the affirmed public interest objectives of this section, namely, to prevent malpractices. The unconscionable exploitation of another to his detriment is undoubtedly a form of malpractice. Hence, it would seem reasonable for the judiciary to apply the reasonable reliance doctrine, or other enforcement remedies, to contracting parties who are victims of unconscionable exploitations in the context of agreements that do not comply with section 2(1).

In light of the law that has been set out above, it is clear that section 2(1) applies to the sale agreement, as the piece of land that was allegedly sold was not sold on auction. Determining whether the sale agreement meets section 2(1)’s required formalities, there is evidence that such agreement was \textit{reduced to a written document}, to which \textit{the seller’s signature and purchasers’ initials were appended}, as prescribed by the section. However, because purchaser two admitted that he provided purchaser one with \textbf{oral authorisation} to sign on his behalf, the sale agreement falls short of full compliance with section 2(1), as the section blatantly prescribes \textit{written authorisation}

\textsuperscript{20} \textit{Wilkens NO v Bester} 1997 3 SA 347 (SCA) at 362G.
\textsuperscript{21} Myburgh op cit note 7 at 271.
\textsuperscript{22} \textit{Trust Bank van Afrika Bpk v Eksteen} 1964 3 SA 402 (A).
\textsuperscript{23} 2009 4 SA 74 (SCA).
\textsuperscript{24} C. J. Pretorius and R. Ismail ‘Reliance, formalities and the mode of acceptance of an offer–Pillay v Shaik 2009 4 SA 74 (SCA)’ (2011) 32(2) \textit{Obiter} 453 at 460.
\textsuperscript{25} Ibid at 458 and 460.
\textsuperscript{26} Ibid at 458.
in such instances. Since it is evident that the purchasers still wish to negotiate the purchase price of the land with the seller, and since such a short period of time has elapsed between the conclusion of the void sale agreement and the relaying of the purchasers’ remorse, it seems highly unlikely that any of the three contracting parties had performed in terms of the void sale agreement. Thus, it is improbable that such agreement could be deemed valid *ab initio* for having had full performance rendered in respect of it by all three contracting parties. Further, rectification of the non-compliant oral authorisation by purchaser two is impossible; and no enforcement remedies are currently available to the seller in this situation. Therefore, it has to be concluded that the sale agreement is void *ab initio* and of no force or effect.