

SOUTH AFRICA / JUDGMENT

Cilliers and Another v Cilliers and Others (UM08/22) [2023] ZANWHC 73 (13 June 2023)

[2023] ZANWHC 73

COURT

North West High Court, Mafikeng

BEFORE

S Mfenyana

CASE / FILE NUMBER

UM08/22

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Source record**IN THE HIGH COURT OF SOUTH AFRICA****NORTH WEST DIVISION –****MAHIKENG****Case****No.: UM08/22**

Reportable:

YES / NO

Circulate

to Judges: YES / NO

Circulate

to Magistrates: YES / NO

Circulate

to Regional Magistrates: YES / NO

In

the matter between:

DEON

VAUGHN CILLIERS

First

Applicant

OSTIPROP

1163 CC

Second

Applicant

and

JACQUES

LOURENS CILLIERS

First

Respondent

(in

his personal capacity as well as
his
representative capacity as Trustee
for
the time being of the Laurie Cilliers Trust)
ANDRE
DANIEL CILLIERS
Second
Respondent
for
the time being of the Laurie Cilliers Trust
and
the Glenlore Estates Trust)
RACHEL
CATHARINA CILLIERS N.O
Third
Respondent
(in
her representative capacity as Trustee
HERMANUS
PIET RETIEF VON WIELLIGH N.O
Fourth
Respondent
(in
his representative capacity as Trustee
CB
ELECTRICAL WHOLESALERS &
CONTRACTORS
(PTY) LTD
Fifth
Respondent
REGISTRAR
OF DEEDS, PRETORIA
Sixth Respondent
This
judgement was handed down electronically by circulation to the
parties' representatives via email. The date and time
for hand-down is deemed to be 13 June 2023 at 10h00.

JUDGEMENT

MFENYANA AJ

Introduction

- [1] On 20 January 2022, the applicants brought an urgent application seeking to interdict the first and fifth respondents from selling and / or disposing of the immovable property described as portions 110 and 118 of the farm Kromrivier, pending the determination of Part B of the application.
- [2] In Part B, the applicants sought to compel the first, second and fifth respondents to sign all documentation necessary to give effect to an agreement concluded between the parties on 13 February 2019, failing which, the Sheriff of this Court be ordered to sign on their behalf.
- [3] Part A was opposed only by the first and fifth respondents, while the second to fourth respondents filed a notice of intention to abide the decision of the Court.
- [4] On 8 February 2022, this Court per Mahlangu AJ, granted an order disposing of Part A of the application. The effect of the order was that the first and fifth respondents were interdicted from disposing of the portion 110 and the applicants' part of portion 118 of Farm Kromrivier, pending the determination of Part B, that part of the application being postponed sine die. In terms of a settlement agreement which was, likewise, made an order of Court, the costs of the application were reserved.
- [5] Part B is opposed only by the first, second and fifth respondents. The third and fourth respondents have filed a notice of intention to abide.
- [6] The first and fifth respondents have also filed a counter- application seeking an order compelling the first and second applicants to take all steps necessary and sign all documents necessary to give effect to the agreement between the parties, in relation to subdivision, consolidation, registration of water rights, and the transfer of Portion 110.
- [7] In the alternative, and in the event that the applicants fail to comply with the above, that the Sheriff of this Court, be ordered and authorised to take such steps, and sign all the necessary documentation on behalf of the applicants.
- [8] Both parties seek costs against each other.

The parties' submissions

- [9] Laurie Cilliers who died on 28 August 2019, had during his lifetime created two trusts, the Laurie Cilliers Trust, and the Glenlore Estates Trust. The first applicant, together with the first and second respondents, are joint trustees of each of the trusts. The trusts are owners of certain immovable properties and companies. At some stage before the demise of their father, Laurie Cilliers, together with his three sons and daughter, Michelle Erasmus, (as trustees) decided to divide the assets of the trusts equally among the four children for their benefit. They all agreed that Erasmus should take sole possession of Bender Investments CC and resign as trustee.

- [10] As regards the remainder of the trust assets, the trustees agreed that these assets would be valued, and thereafter divided into three equal packages, according to the number of descendants yet to receive benefits. The three packages are contained in a Resolution passed by the three remaining trustees on 13 February 2019.
- [11] The applicants contend that the respondents are holding the applicants to ransom and refusing to sign the documents necessary to give effect to the Resolution, to enable him to access his share of the allocation, (Package 2 of the resolution), until the applicants have complied with certain 'demands' made by the respondents. They further contend that in doing so, the respondents are treating the signing of the documents as a pre- condition for them to comply with the Resolution, which is contrary to the Resolution. They, themselves have failed to comply with the provisions of the Resolution, and have resorted to self-help, in a bid to coerce the applicants to comply with their demands, so contend the applicants.
- [12] The respondents on the other hand, contend that they have taken all the necessary steps to give effect to the Resolution, including the applicant's package, but the first applicant has refused to cooperate.
- [13] The parties are at loggerheads with regard to the consequences flowing from the Resolution, including the rights and responsibilities of each party.
- [14] In reply, the first applicant avers that it was never intended that a servitude should be registered as this would have required the parties to agree to a process to be followed and to an alternative, should the water licence not be granted.
- [15] Upon consideration of the papers filed of record, it became apparent that there is a material dispute of fact, particularly in respect of the following:
- (i) Whether the agreement created a right in favour of the first respondent to access water from the reservoir (which forms part of the property of the applicants).
 - (ii) Registration of water rights / Ministerial approval for water usage.
 - (iii) Whether a servitude falls to be registered, and if so, over which property. (Portion 79 (belonging to the Applicants) or Portion 110 (belonging to the first respondent)).
 - (iv) Which party is liable for the costs occasioned by the registration of the servitude.
 - (v) The intention of the parties in passing the Resolution of 13 February 2019, and the process followed in allotting the packages.
 - (vi) The process followed in the distribution of the packages to each of the trustees/beneficiaries and the terms of the distribution agreement.
 - (vii) The terms of the agreement/ subsequent agreements entered into between the parties, and whether these were oral or in writing.
 - (viii) The extent of the rights and obligations created by the agreement between the parties.

- (ix) The interpretation / meaning to be ascribed to Clause 11 of the Resolution.
- (x) The intention of the Trust founder in creating the Trusts.
- (xi) The terms of the Trust Deed/s founding the Laurie Cilliers Trust and the Glenlore Estates Trust.
- (xii) The process of valuation of the assets.
- (xiii) Reference to a distribution agreement- the terms thereof- not pleaded nor is there reference made thereto.
- [16] Rule 6(5)(g) of the Uniform Rules of Court, states that where an application cannot be properly decided on affidavit, the court may dismiss the application or make such an order as it deems fit, to ensure a just and expeditious decision, including directing that oral evidence be heard on specified issues in order to resolve any dispute of fact.
- [17] Given the various factual disputes emanating from the submissions by the parties, I am unable to determine the matter on the papers. The disputes are in my view, significant and incapable of being resolved on the papers. I have considered that it would not be desirable to settle these disputes of fact solely on the parties' contentions. Motion proceedings are ideally suited to resolve issues based on common cause facts as they are not concerned with probabilities.
- [18] For these reasons, I consider it in the interests of justice that oral evidence be heard, and issue appropriate directions as to pleadings.

Order

[19] In the result, I grant the following order:

- (a) The matter is referred to trial.
- (b) The notice of motion shall be deemed to be the summons and the founding affidavit, shall be the particulars of claim.
- (c) The answering affidavit shall be deemed to be the plea.
- (d) The replying affidavit shall be deemed to be the replication.
- (e) Should any party wish to amend, the provisions of Rule 28 of the Uniform Rules shall apply.
- (f) Further exchange of pleadings and pre-trial processes, discovery, and the request of further particulars for purposes of trial, shall follow the usual process as regulated by the Uniform Rules.

S MFENYANA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTHWEST DIVISION, MAHIKENG

APPEARANCES

For the Applicant: Mr A Van Vuuren Instructed by: Linda Erasmus Attorneys C/O: Maree & Maree Attorneys Email address: magcourt@maree-mareeattorneys.co.za For the Respondent: Ms N Neetling Instructed by: Du Plessis Van Der Westhuizen C/O: Smith Neetling INC. Email address: nicolene@smitneethling.co.za Heard on: 17 November 2022

Judgement

handed down: 13 June 2023

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Prepared on 10 October 2026 · Esheria