

SOUTH AFRICA / JUDGMENT

Coetzee v Registrar of Deeds, Bloemfontein and Others (1674/2017) [2017] ZAFSHC 189 (10 November 2017) [2017] ZAFSHC 189

COURT

Free State High Court, Bloemfontein

BEFORE

C Reinders

CASE / FILE NUMBER

1674/2017

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

No: 1674/2017

In

the application between:

ANDRIES
WESSELS
COETZEE
Applicant
and
THE
REGISTRAR OF DEEDS,
BLOEMFONTEIN First
Respondent
HENDRIK
WILLEM COETZEE
N.O. Second
Respondent
JOHANNES
HENDRIKUS COETZEE N.O.
Third Respondent
SANEL
DU PLESSIS
N.O.
Fourth Respondent
FIRST

NATIONAL
BANK
Fifth Respondent
LAMBERTUS
NICOLAAS RAS
Sixth Respondent
HENDRIK
WILLEM COETZEE
Seventh Respondent
JOHANNES
HENDRIKUS COETZEE
Eight
Respondent
SANEL
DU
PLESSIS Ninth
Respondent
HULDA
RAS
Tenth Respondent
PAARDEN
VALLEI BOERDERY (PTY) LTD
Eleventh Respondent
LAMBERTUS
NICOLAAS RAS N.O.
Twelfth Respondent
CATHARINA
EMILIA HENRIETTE VERSTER N.O.
Thirteenth
Respondent
PHILIP
DU TOIT
N.O. Fourteenth
Respondent
LAND
AND AGRICULTURAL DEVELOPMENT
BANK
OF SOUTH
AFRICA Fifteenth
Respondent

JUDGMENT

BY: C. REINDERS, J

HEARD ON: 12 OCTOBER 2017

DELIVERED ON: 10 NOVEMBER 2017

- [1] The Applicant in his Amended Notice of Motion dated 12 May 2017 seeks interim orders against the various Respondents herein. He avers that pending finalisation of case number 53511/2015 ("the main proceedings") in the Gauteng Division of the High Court held at Pretoria Cthe Pretoria High Court") the Registrar of Deeds Bloemfontein should be interdicted and restrained from registering transfer of ownership of two immovable properties in the Free State. These are the farms known as the remaining extent of Paarden Vallei 263 and the farm Kadiesdrift 259, both which are situated in the Vrede district ('the properties').
- [2] The Registrar of Deeds Bloemfontein is the First Respondent herein and does not oppose the application, neither do the Fifth and Fifteenth Respondents. It is however opposed by the Second, Third and Fourth Respondents in their capacities as trustees of the Hans Coetzee Trust ("the Trust"). The trustees of the Trust had also been cited in their personal capacities as the Seventh, Eight and Ninth Respondents respectively. The relief sought by the Applicant is also opposed by the Sixth to Ninth and Eleventh to Fourteenth Respondents, collectively referred to as "the Ras Group". The Ras Group represents the purchasers of the properties. It is common cause that the Trust (and therefore its trustees in their capacities as such) are the registered owners of the properties. The order sought seeks to restrain transfer from the Trust to the Ras group.
- [3] There is no doubt that this court has jurisdiction to entertain this matter as not only are the properties situated in the Free State but the First Respondent being the Registrar of Deeds is the functionary who is to effect the transfer. The interim order is however sought pending finalisation of an action not in this court's jurisdiction. It concerned me that I am to make interim orders pending the outcome of an action over which this court has no jurisdiction, or put differently whether it would be appropriate for this court to make interim orders over which the trial court would have no control. It is trite law that a trial court can amend or change or even uplift interim orders depending on the circumstances in a pending case before it, for example where the main case is to be postponed or even when the order needs to be amended as the trial proceeds. I raised the matter with counsel but none of them shared my concerns.
- [4] The complete pleadings in the main proceedings do not serve before me. The Applicant in his founding papers states that on the 9th of July 2015 the Trust instituted an action in the Pretoria High Court against the Applicant's nominee wherein they claim inter alia a declaratory order that the minute of the meeting of the trustees on the 12th February 2008

and the subsequent Purchase Agreement in terms whereof the Trust sold the farm Scots 204 to Applicant's nominee be declared null and void and a further order that the transfer of the farm Scots 204 be declared void and invalid and transferred back to the Trust with immediate effect. The Applicant defends that action and states his main defences to be that his dismissal as a trustee was unlawful and void and that the appointment of the Second and Third (sien p 15 2,3 en 4) Respondents as trustees is also unlawful and void. He states that he has filed a counter-claim as well as relief regarding the purported sale of the assets of the Trust.

The formulation of Applicant's plea and counter-claim (at the time of the drawing of the founding affidavit) stands to be adjusted by way of an amendment but he confirms that he seeks the relief referred to above.

- [5] It is necessary to mention that the farm Scots 204 is not one of the properties in respect whereof relief is sought in the Amended Notice of Motion. It is contended by the Second, Third and Fourth Respondents that Applicant's trusteeship terminated in 2013. The Applicant however contends that he is still a trustee due to the fraudulent actions committed by the Second, Third and Fourth

Respondents. He is at present still an income beneficiary of the Trust. The Applicant explains that during December 2012 he was

informed that he should resign as a trustee of the Trust. He was not prepared to do so and on 2nd March 2013 he was invited to a meeting of the trustees and from the agenda for such meeting it was patently clear that it had been decided beforehand to terminate his appointment as trustee. He elected not to attend the meeting and established from a copy of the minutes that his appointment as trustee had been terminated. The Master of the High Court Pretoria on the 21st of August 2013 issued a new letter of authority confirming Second, Third and Fourth Respondents to be the trustees of the Trust. However, Applicant avers that the Master of the High Court Pretoria was furnished with an alternative minute of the meeting on 8th March 2013 in which it was purported that Applicant was present at the meeting and that Applicant has resigned as trustee which had been accepted by those present. He draws the inference that the Master was misled by the alternative minute to obtain letters of authority from it to authorise the Second, Third and Fourth Respondents to act as trustees.

- [6] Immediately upon the appointment of the new trustees they organised an auction to sell all the farms, sheep, cattle, tractors and loose assets. Applicant saw this in an advertisement in the Landbou Weekblad magazine on 17 September 2013. He launched an urgent application to prevent the intended auction pending finalisation of an application to be instituted for the removal of the Second Respondent as a trustee and the appointment of an independent trustee for the Trust. He later abandoned the application and was informed by the Trust's bookkeeper that all the assets had in fact been sold. Although the Trust instituted the action in July 2015 it was only in March 2017 that he realised the two properties had in fact not yet been transferred and that the transfer still had to take place. This eventually lead to the

present application. Needless to say, the trustees deny having defrauded him.

- [7] The Trust contends that the only valid letter of authority pertaining to trustees is a letter dated 21st August 2013 and as long as same is not set aside by an order of court it constitutes the lawful appointment of the trustees. They emphasize that no steps have been taken to have the letter of authority set aside. The trustees state that at the time when the Sale Agreement was entered into the appointed trustees acted upon its behalf. Applicant admits that he knew of the change of trustees since March 2013 and was also aware of the sale since October 2013. No relief is sought by Applicant to set aside the transaction in the current pending legal proceedings.
- [8] The proper approach in an application of this nature is to consider the facts as set out by the Applicant, together with any facts set out by the Respondents which the Applicant cannot dispute and to consider whether, having regard to the inherent probabilities, the Applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the Respondents should then be considered.

See: *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

Saharawi Arab Democratic Republic and Another v Owner and Charterers of the MV 'NM Cherry Blossom' and Others 2017 (5) SA 105 (ECP) at para 50.

- [9] An applicant who prays for an interim interdict is required to establish the following four elements:
- (a) a prima facie right;
 - (b) a well-grounded apprehension of irreparable harm if interim relief is not granted and the alternate relief is eventually granted;
 - (c) a balance of convenience in favour of the granting of an interim relief;
 - (d) the absence of any other satisfactory remedy.

See: *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) at para [49].

- [10] It concerns me that Applicant had knowledge of the alleged fraudulent conduct, instituted an application in this regard, abandoned it and never pursued any proceedings in this regard since. The action in the High Court Pretoria was instituted in 2015 and I am to believe that this matter will be concluded in the foreseeable future. However, Applicant has not finalised his plea and counterclaim and is still in the process of amending same. It does create the impression that Applicant is either uncertain or not serious to have the “fraud” of 2013 rectified. Be that as it may and from the information supplied to me I am not convinced that the properties are part of the *res litigiosa* in the Pretoria High Court. As far as I could establish from the papers reference regarding the properties is not even made in the main proceedings. As things stand the only trustees that can act on behalf of the Trust are those appointed by the Master in March 2013.

See: Luppachini N.O. and Another v Minister of Safety and Security 2010 (6) SA 457 (SCA).

Applicant has been aware of the letter of authority reflecting the appointments since 2013 and has done nothing to rectify it which casts serious doubt on what he avers to be his prima facie right.

[11] It follows that I am not inclined to grant the requested interim order.

[12] The Ras group (as Respondents) have filed what is called a "counter- application". This counter-application does not seek relief against the Applicant but rather against the Trust and seeks to compel the Trust to give transfer of the properties to Sixth and Tenth Respondents and subsequently to the Eleventh Respondent. This is based on sale agreements entered into with the trustees as far back as February 2014.

[13] The relief sought by the applicant is final in nature. This relief is sought by way of motion proceedings. Where final relief is sought by way of motion proceedings the test to be applied is that stated in Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd

[1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E - 635C.

"... (W)here in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justifies such an order."

To that end I have to take cognisance of the case pending in the Pretoria High Court wherein the Applicant avers that he was improperly and/or fraudulently removed as a trustee of the Trust and that this is one of the disputes to be adjudicated by the Pretoria High Court. It boils down thereto that Applicant contends that he is still factually a trustee of the Trust. Should that court

come to such a conclusion (and I obviously do not make any suggestions or findings in this regard) it is in principle possible

that the Pretoria High Court might conclude that Applicant is still a trustee and order the Master to rectify its letter of authority dated 11 March 2013. In such an event the Sale Agreement upon which the Ras Group presently relies might be unenforceable as the trustees did not sign the Agreement as is required by Sec 2 (1) of the Alienation of Land Act 68 of 1981 alternatively at least the trustees did not authorise the sale of the property. To grant the order would presuppose that the Pretoria High Court can and will not come to the finding referred to above and/or might result in conflicting decisions for example a finding herein that the trustees of the Trust, duly appointed, authorised the sale whereas the Pretoria High Court having heard evidence might come to a different finding. For these reasons I am not prepared to grant the counter-application.

[14] I therefore make the following orders:

14.1 The main application is dismissed with costs, including the costs of two counsel.

14.2 The counter-application is dismissed with costs, including the costs of two counsel.

C REINDERS, J

On behalf of the Applicant:

Adv. S.D. Wagener SC

Adv. W.W. Gibbs

Instructed by:

Weavind and Weavind Incorporated

c/o Matsepes Inc.

BLOEMFONTEIN

On behalf of the Second, Third, Fourth, Seventh, Eighth and Ninth

Respondents:

Adv. R. du Plessis SC

Adv. J. de Beer

MJK Attorneys

c/o Symington De Kok Attorneys

On behalf of the Sixth, Tenth,

Eleventh, Twelfth, Thirteenth

and Fourteenth Respondents: Adv. P. Zietsman SC

Adv. R. van der Merwe

Tim du Tait Attorneys

c/o Adrie Hechter Attorneys

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Prepared on 12 October 2026 · Esheria