

SOUTH AFRICA / JUDGMENT

Diale and Others v Alant Properties Investment (Pty) Ltd and Another (111146/2025) [2025] ZAGPPHC 750 (23 July 2025)

[2025] ZAGPPHC 750

COURT

North Gauteng High Court, Pretoria

BEFORE

Ferreira AJ

CASE / FILE NUMBER

111146/2025

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

Case

number: 111146/2025

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHERS JUDGES: YES/NO

(3)

REVISED

DATE:

23/7/2025

SIGNATURE

In

the matter of:

KOPANO
DIALE
First Applicant
KEA
DIALE
Second Applicant
MOLEPO
MAMPURU
Third Applicant
SHIRLEY
MABASA
Fourth Applicant
CHELESANI
SIBANDA
Fifth Applicant
NONZUNZO
CELE
Sixth Applicant
CITY
OF JOHANNESBURG
Seventh Applicant
and
ALANT
PROPERTIES INVESTMENT (PTY) LTD
First Respondent
Registration
number : 2012/189179/07)
ALANT
ALBERT STEFANUS
Second Respondent

JUDGMENT

Coram Ferreira AJ

1. In this matter the Applicants were evicted from the premises they occupied known as Section 33, number 1 [...], B[...] T[...],
5[...] A[...] Road, Berea, Johannesburg, Gauteng. This eviction occurred on 9 July 2025. Two days later and at midnight the present
application was launched with no notice to the Respondents. The court directed that service be effected on the Respondents. This was done, the Respondents opposed and the matter was ventilated with full argument and a full set of papers on 18 July 2025.
2. Although there are some duplicates of documents in the papers, the CaseLines file consisted of more than 600 pages of documents.

3. After debate with counsel for the Applicants, upon invitation from the court, Mr. Marishane, made it clear that only the following

relief, apart from a ruling in respect of urgency, will be sought from the Applicants amended notice of motion:

“2. That the court order dated 4 March 2025 made by Magistrate CG Rouy be suspended in terms of Rule 45A of the Uniform Rules of Court until such time that the suspension is lifted by court order or set aside.

...

4. That the Second Respondent immediately provides unlimited and unimpeded access to the immovable property forming the subject matter of the eviction, which property is described as Door 3[...] section, number 1[...], B[...] T[...], with street address being 5[...] A[...] Road, B[...] T[...].
5. That the Second Respondent restores possession of the immovable property forming the subject matter of the eviction, which property is described as Door 3[...] section, number 10, B[...] T[...], with street address being 5[...] A[...] Road, B[...] T[...], to the First and Second Applicants.
6. That the Second Respondent should not disturb and/or interfere, in any way, with the First and Second Applicants and/or those that occupy the property through or under them after being restored possession and taking occupation again by virtue of this order.
7. That the Second Respondent removes all blockades, bucklers, barriers, locks, chains, security personnel (placed and/or installed after the eviction was carried out) and to return any keys taken from the First and Second Applicants, and hand over any new keys of the property mentioned under paragraph 4 and 5 above, to the First and Second Applicants within 4 hours of this order.
8. Alternatively, if the Second Respondent fails and/or refuses to act as aforesaid in paragraph 7 above, the Applicants are authorised to break any blockades, bucklers, barriers, locks, chains, and to have removed by the members of the South African Police Service (SAPS) the security guards placed to guard the property.
9. That the Second Respondent be interdicted from further interfering, in any way, with the First and Second Applicants occupation of the said property, including not to use third parties to evict the First and Second Applicants or those that occupy the property through or under them during the period of suspension or at all by virtue of this order until such time that the suspension is lifted by court order or set aside.
13. That this order be served on the Second Respondent, the sheriff and/or his / her deputy, caretaker (or anybody acting in his place) via their known email addresses, or company representatives, legal representatives, including WhatsApp numbers, and SMS messaging.

14. That the Second Respondent is ordered to restore possession to the Applicants by taking back the movable property previously removed by them through the use of third parties, and placed on the sidewalk/pavement during the eviction, into Door 3[...] section, number 1[...], B[...] T[...], with street address being 5[...] A[...] Road, B[...] T[...] within 6 hours of this court.
15. That the Second Respondent should pay the costs of this application at attorney and client scale.”
4. The eviction complained of by the Applicants follows, inter alia, from an eviction order (“the eviction order”) granted in the Lower Courts on 4 March 2025. Both the First and Second Applicants herein are identified as the First and Second Respondents in the eviction order of 4 March 2025.[1]
5. The eviction order is now subject to an appeal in terms of a notice of appeal filed by the present Applicants on 9 July 2025.[2]
6. The court pauses to state that there is a title deed in the name of the First Respondent having purchased the property on a sale in execution levied against the present Applicants’ parents. A purchase consideration of R336 339.00 is indicated as having been the purchase price paid by the First Respondent on the sale in execution. This deed of transfer was registered in the First Applicants name on 16 February 2022. This followed an order of this court of 20 June 2019 declaring the relevant property executable.
7. The First and Second Applicants seemingly opposed the eviction proceedings in the Lower Courts, filed notices of intention to oppose and opposing affidavits.
8. This court must follow the settled legal position in respect of the status of court orders. The eviction order is a legitimate and enforceable order. In the most recent full court decision of *Van Dyk vs Rhodes A2024-076119* and delivered on 24 February 2025, the court found as follows:

*“1. The central question in this appeal is whether a court order can be rescinded merely upon proof that the common law would have regarded it as a nullity. We hold that, in light of section 165 (5) of the Constitution, 1996, and of the decisions of the Constitutional Court in *Department of Transport v Tasima* 2017 (2) SA 622 (CC) (“Tasima”) and *City of Ekurhuleni City v Rohlandt Holdings CC* 2025 (1) SA A (CC) (“Rohlandt”), a court order can no longer be ignored or rescinded merely upon proof that it would have been regarded as a common law nullity. The ordinary principles of rescission or appeal will always apply to court orders wrongly granted, no matter what error led to their issuance.”*
9. The inherent jurisdiction of the High Court does not include jurisdiction to interfere with the principle of the finality of judgments.[3]

10. In consequence this court has difficulty, despite the First Respondents de-registration, to find that there was any form of spoliation and is of the view that the eviction was consequent upon due process having been followed.

11. This leads the court to the enquiry as to whether an interim interdict of any kind is appropriate. The Applicants contend in paragraph 8.4 of their founding affidavit[4] that:

“8.4 It has always been my contention that the First and/or Second Respondents are not the owner(s) of the property and that in fact my mother and father owned the said property which was given to myself and family before my father passed away.”

12. It is trite that ownership in respect of immovable property passes by way of registration. The Applicants do not contend that they have a title deed in their name. The title deed in the name of the First Respondent clearly demonstrates that the property was purchased pursuant to execution levied on the Applicants’ parents. A further complicating feature for the Applicants is that

the underlying judgment against their parents and the subsequent sale in execution, in part, now falls within the deceased estate of the Applicants’ late father as he passed away, on their version.

13. There is no factual basis to contend that the First Respondent did not become the owner of the relevant property, having purchased

it on a sale in execution and despite being in some form of de-registration.

14. The locus classicus in respect of a prima facie right for purposes of considering an interim interdict is Webster vs Mitchell SA 1948 (1), page 1186. Interestingly enough, it involved ownership issues in respect of a registered racehorse and its registration.

15. In the present matter, the Respondents proffer a legitimate version for the registration of the relevant immovable property in the name of the First Respondent. The Applicants proffer no additional explanation for their claimed title but for that the property was given to them before the Applicants’ father passed away. The court is not told when the Applicants’ father passed

away and why they did not obtain the registered title of the property in their names. It brings into question whether the present

Applicants can succeed in any proceedings to attack the underlying judgments. They ought to have established a prima facie right “though open to some doubt”. In applying the test in Webster vs Mitchell above namely:

“... is to take the facts as set out by the applicant, together with any facts set out by the respondent 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 a trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant he could not succeed in obtaining temporary relief, for his right, prima facie established, may only be open to “some doubt”. But if there is mere contradiction, or unconvincing explanation, the

matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief. Although the grant of a temporary interdict interferes with a right which is apparently possessed by the respondent, the position of the respondent is protected because, although the applicant sets up a case which prima facie establishes that the respondent has not the right apparently exercised by him, the test whether or not temporary relief is to be granted is the harm which will be done. And in a proper case it might well be that no relief would be granted to the applicant except on conditions which would compensate the respondent for interference with his right, should the applicant fail to show at the trial that he was entitled to interfere.”[5]

16. In the present case, it is difficult to see that the Applicants can succeed with any final relief at a trial. The proof that is constituted and confirmed by the title deed of the relevant property gainsays this version. The execution order was not made against them and their father is now deceased. The eviction order was executed already despite there now being a pending appeal thereto.
17. The main thrust of the Applicants case is that the First Respondent have become de-registered in terms of the CIPC records and could never have instructed the sheriff to execute same nor could or should the First Respondent have obtained the eviction order.
18. The Companies Act, 2008 (Act No. 71 of 2008) of South Africa governs the process of deregistration under certain sections. The key sections relevant to the deregistration of a company, whether voluntarily or involuntarily, are outlined below:

18.1 Section 73 – Deregistration of a Company:

18.1.1 This section covers the process of deregistering a company, including the procedures and conditions that apply. It sets out the CIPC's powers to deregister a company and the grounds under which a company can be deregistered.

18.1.2 Subsection (1): States that a company may be deregistered if it has failed to submit its annual returns for two consecutive years and has no outstanding liabilities.

18.1.3 Subsection (3): Specifies that if a company has not been carrying on business, it can be deregistered under certain conditions.

18.1.4 Subsection (4): Requires that CIPC must publish a notice of deregistration in the Government Gazette, providing a grace period (typically 3 months) for any objections to be raised.

18.2 Section 74 – Restoration of Deregistered Company:

18.2.1 This section deals with the restoration of a company that has been deregistered. It provides for the restoration procedure if there are valid reasons for wanting to restore a company that was deregistered either voluntarily or involuntarily, particularly if it was deregistered due to non-compliance (like non-filing of annual returns).

18.2.2 If there are valid reasons for the company's restoration, such as missed filing or unnoticed liabilities, the company can apply for its restoration through the CIPC.

19. Although the CIPC printouts annexed to the Applicants papers indicate that the First Respondent is in final de-registration, there

is nothing before this court suggesting that there has been compliance with Section 73(4) for such alleged de-registration to be

effective. In any event, the probative value of the unconfirmed CIPC printouts is limited.

20. On the one hand, the Applicants contend that the property they were evicted from are theirs because it was given to them by their parents before their father passed away. On the other hand, as a result of the alleged de-registration of the First Respondent, the Applicants contend that the property is bona vacantia. This inherent contradiction is self-destructive of any rights that the Applicants may have claimed to have in respect of the property

pursuant to the eviction order.[6]

21. There is no new imminent threat to the Applicants. The eviction has occurred already. A court cannot interdict something that has occurred already.

22. In consequence of all of the above, this court finds that any prima facie right that the Applicants managed to establish, is subject to serious doubt if any evidence therefore has been established at all.

23. In addition, it is trite that the court has a discretion whether or not to grant an interdict which must be decided on the circumstances of each case.[7] [8]

24. Furthermore, for purposes of considering the outcome of this application, it is accepted that the relief sought by the Applicants

ought to include the First Respondent. This is despite the Applicants counsel abandoning relief sought against the First Respondent during argument.

25. On a conspectus of the entire case, available evidence, relief sought and the courts discretion in granting or refusing interdicts, the courts discretion is exercised against granting any order against the Respondents.

26. In consequence, the application is to be dismissed. The court has a discretion in respect of costs. In the exercise of this discretion, the court is of the view that the Applicants are not to be saddled with costs for bringing this application, despite its failure. The court can find no reason for the Respondents to pay the Applicants costs. Equally, the Respondents opposition to the present

application has some merit, although certain unexplained issues, such as the First Respondent's alleged de-registration, if any, causes the court to deviate from the normal rule that costs should follow the result.

27. In the premises, the following order is granted:

“1. The application is dismissed.

2. Each party is to bare its own legal costs.”

EJ FERREIRA

Acting Judge of the High Court

Gauteng Division

Date of hearing:

18 July 2025

Judgment

delivered: 23 July 2025

For the Applicants:

Marishane Attorneys

Counsel for the Applicants: Mr. Marishane (Attorney with right of appearance)

Attorney for the Respondents: Ntozake Attorneys

Counsel for the Respondents: Advocate P Mafu

[1] CaseLines 074-54

[2] CaseLines 074-34

[3] De Wet vs Western Bank Limited 1977

(4) SA 770 (T)

[4] CaseLines 006-37

[5] Webster supra 1189 - 1190

[6] CaseLines 006-33

[7] Mostert v De Beers Consolidated Mines Ltd (1893) 7 HCG 25 at 33; Wynberg Municipality v Dreyer 1920 AD 439 at 447; Rivas v The Premier (Transvaal) Diamond Mining Co Ltd 1929 WLD 1 at 14 – 16; Transvaal Property & Investment Co Ltd v SA Townships Mining & Finance Corp Ltd 1938 TPD 512 at 520 – 521; Knox D’Arcy Ltd v Jamieson [1996] ZASCA 58; 1996

(4) SA 348 (A) at 361H – 362C; Lieberthal v Primedia Broadcasting (Pty) Ltd 2003

(5) SA 39 (W) at 43 E; Cape Town City v South African National Roads Agency Ltd 2015

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- (6) SA 535 (WCC) at 632 F – G. The discretion of the court is not a “narrow discretion” as an appeal court is entitled to substitute its view for that of the court (*Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 277 I – 278 B).
- [8] *Kemp, Sacs & Nell Real Estate (Edms) Bpk v Soll* 1986
- (1) SA 673 (O) at 689 I – 690 A.
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