

SOUTH AFRICA / JUDGMENT

Du Plooy and Another v Sheriff for the District of Virginia and Others (5326/2024)

[2025] ZAFSHC 147 (29 May 2025)

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COURT

Free State High Court, Bloemfontein

BEFORE

Opperman

CASE / FILE NUMBER

5326/2024

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Policy

IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable

/ Not reportable

Case no: 5326/2024

In the matter between:

EMILE

DU PLOOY

First

Applicant

SONJA

ELIZABETH DU PLOOY Second

Applicant

and

THE

SHERIFF FOR THE DISTRICT OF VIRGINIA

First Respondent

PARK

VALUE AUCTIONS CENTRAL (PTY) LTD Second

Respondent

RUWAYNE
SMITH N.O.
Third
Respondent
KHATHAZILE
SIMON MAHLANGU N.O.
Fourth
Respondent

Coram: Opperman J

Heard: 5 December 2024

Delivered: 29 May 2025. This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 29 May 2025 at 15h00.

Summary: Application for interdict against liquidator – cancellation of auction and sale of moveable property – forced supply of information of buyers of property on auction – access to property.
ORDER
The application is dismissed with costs to be taxed on scale C

JUDGMENT

Opperman J

Introduction

[1] The applicants move for what appears to be an interim interdict. The aim of the application, according to counsel for the applicants, is to prevent the respondents from alienating and removing or, further so, alienating and removing all movable property situated at 3[...] C[...] Avenue, Virginia (the premises). They specifically want:

'i) Access to the building to take inventory; ii) The opportunity to prove ownership of any items not sold and removed from the building;

iii) To be placed in possession of items of which ownership have been proven.'

[2] The third and fourth respondents assert that the relief sought became moot and that the applicants did not make out a case for an interim interdict in that they did not comply with the requisites in law therefor.

Parties

- [3] The first applicant is a major businessman from Virginia. The second applicant is a major female and wife of the first applicant.
- [4] The first respondent is the sheriff for the district of Virginia. The first respondent is cited, according to the applicants, in his capacity as the court official responsible for attaching the movable property in issue stored at the premises. The second respondent is cited as Park Value Auctions Central (Pty) Ltd, a private company with registered business address situated at Randburg, and trading address in Bloemfontein. The second respondent is cited in their capacity as auctioneer appointed to auction off the movable property in issue. The citation of the second respondent is wrong according to the liquidators. The correct name of the second respondent is Park Village Auctions, registration number 2009/020483/07 (not as indicated in the notice of motion to be 2009/0202482/07) with trading address at corner of R64 and Valencia Road, Waterbron, Bloemfontein. The citation in the notice of motion also differs from the citation in the founding affidavit.[2]
- [5] The third respondent is Ruwayne Smith N.O., in his capacity as liquidator of Global Group Auctions (Pty) Ltd (in liquidation) (Global Group). The fourth respondent is Khathazile Simon Mahlangu N.O., in his capacity as liquidator of Global Group. The third and fourth respondents were appointed by the Master of the High Court, Bloemfontein, as the liquidators of Global Group on 2 May
2023. The first and second respondents did not join in the litigation. As indicated above; the application is opposed by the third and fourth respondents.

Background and relief

- [6] On 22 August 2024, the applicants demanded the release of certain assets by way of affidavit to the liquidators from the premises of the liquidated estate of Global Group. Global Group was, as far back as 22 December 2022, placed under provisional liquidation, and then final liquidation on 2 February 2023.[3] The director of Global Group is the stepson of the first applicant. It is alleged by the applicants that in October 2022 they stored some property on the premises which allegedly belongs to the applicants. In August 2024, the applicants learned via an advertisement of an auction of the property of the liquidated company starting on 12 August 2024 and ending on 22 August 2024. The first applicant stated in his founding affidavit that: 'To my utter dismay, I noted, from the photographs, that all of the assets being advertised, were the movable assets of myself and the second applicant.'[4] The first applicant stated that they might be able to prove ownership of the property. Any persons, according to him, that purchased the property will have to be litigated against applying the rei vindicatio. In spite of continued requests for information of the purchasers, he was only given a list of the goods sold and the amounts which the goods have been sold for.
- [7] The affidavit was deposed to on the 16th of September 2024. The application was filed on 19 September 2024 and only landed on the court roll for hearing on 5 December 2024. The peculiarity of the application is the relief sought in the notice of motion. Counsel for the

applicants conceded during the hearing of the case that prayers 1, 2 and 3 have become moot and were moot from the beginning of the application. As said, the application was filed on 19 September 2024, and the auction ran from 12 to 22 August 2024. This is the relief sought as per the notice of motion:

- ‘1. That the continued sale of movable property, from 3[...] C[...] Avenue, Virginia, and advertised under online auction number web#: 1[...] be cancelled pending the outcome of this application.
2. That the continued removal of movable property from 3[...] C[...] Avenue Virginia and sold under online auction number web#: 1[...], be ceased pending the outcome of this application.
3. That all items already sold under online auction number web#: 1[...], and not yet in the possession of purchasers, be placed in the hands of the Sheriff, Virginia, pending proof of ownership of the movable assets by a date to be determined by this Court.
4. That the First and/or Second Respondents make available the names and contact information of all purchasers who have in their possession goods sold under auction number web#: 1[...] to enable service of this order.
5. That the First to Fourth Respondents be interdicted from further advertising and/or selling any of the movable assets stored at 3[...] C[...] Avenue. Virginia, (hereinafter referred to as “the property”), pending the Applicants’ proof of ownership by a date to be determined by this Court.
6. That the Applicants be granted access to the property, accompanied by the Sheriff, to take stock of the items which are still being stored at the property to enable them to prove ownership thereof.
7. That the Applicants be granted leave to approach this Court, on the same papers, duly amplified, if necessary, for an order to take control of and remove all assets of which ownership have been proven.
8. That any party opposing this application, be ordered to pay the costs of the application.’

Mootness

- [8] The chronology of the events shows that the applicants dragged their feet to come to court and obtain some effective solution to protect their property rights. The auction has already been held; all the assets have been delivered to the buyers save for the ‘Bobcat’ which was already sold and there are no further assets that are to be advertised or sold. The applicants already had access to the property as will be shown later. The constitutionality and basic legality of the application: ‘That the First and/or Second Respondents make available the names and contact information of all purchasers who have in their possession goods sold under auction number web#: 1[...] to enable service of this order’ (accentuation added) has not been shown. It is also very wide and not curtailed to the property allegedly owned by the applicants. Prayer 4 is dead in the water and has failed. It lacks legal veracity.

Interdict

[9] The applicants did not comply with the principles of an interdict to be proven before such relief may be granted.[5] The applicant did not show a prima facie right in that, among others, they are the rightful owners. On 26 April 2024 the applicants were invited to bring an application for the release of the assets by the liquidators. The application was not made. After the auction was finalised and on 22 August 2024 the liquidators received an affidavit from the first applicant for the assets to be released. The ownership relied upon by the applicants was rejected. The liquidators then granted the applicants 10 days to bring a substantive application before the court. They did not bring the application and the assets were paid for and delivered to the buyers. The one item, namely the 'Bobcat vehicle', is due to be delivered after transfer has occurred. Ownership has already been transferred to all the buyers.

[10] In addition, the third and fourth respondent's evidence[6] must be accepted that:

'3.14.1 Whereas the Applicants rely in Annexures "FA6.1" to "FA6.7"

on the proof of ownership, that the Honourable Court will note that Annexures "FA6.1","FA6.2", "FA6.3" and "FA6.4" consist of tax invoices issued by an entity called DEALCOR, it further indicates "Sold To. EMILE DU PLOOY / CASH", delivered to 3[...] C[...] Avenue, Virginia (the liquidated company's address), with no proof of payment whatsoever;

3.14.2 Secondly, the Honourable Court will note that the registration certificates attached to those tax invoices indicate that the owner as well as title holder of those assets are DEALCOR THIRTEEN CC and nowhere are there any indications that Emile du Plooy became the owner and/or title holder of any of those assets;

3.14.3 Again, as far as the stainless steel "Spitbraai" is concerned, it only consists of a written note signed by someone, that the "Spitbraai" was sold to Emile du Plooy of Virginia for R5000.00 in cash on 17 September 2021. No proof of payment or delivery are furnished;

3.14.4 As far as the Bobcat asset is concerned, with reference to Annexure "FA6.7", it only indicates that it is a cash sale from Lower Centre on 6 November 2019, the asset was supplied by E du Plooy (in other words not received) and that it was sold for R50,000.00 "Voetstoots". No proof of payment is attached, neither does it indicate that it was a sale of which Lower Centre was the seller and E du Plooy the buyer;

3.14.5 None of the sellers of the aforementioned assets provided any confirmation of the averments, and no confirmatory affidavits are attached in this regard.

4.

I have also obtained a confirmatory affidavit by Hettelien Belinda van den Bergh (Annexure “F”) who is currently employed at Park Village Auctioneers as Administration Manager, being her position since March 2017. I attach hereto the affidavit by Me Van den Bergh who confirms the following:

4.1 On 9 May 2024 at approximately 11:30 am, she met with Mr Emile du Plooy at the premises known as 3[...] C[...] Avenue in Virginia in attendance of a property inspection with a potential buyer and to compile an inventory report of the movable assets currently stored at the premises;

4.2 Mr Du Plooy stated that he worked at the property before closing down and that certain assets do not vest in the estate of Global Group Auctions (Pty) Ltd [in liquidation] with Masters reference B127/2022 and that these assets belong to the previous tenant and he proceeded to show me the assets in question;

4.3 I took photographs of the assets and for ease of reference attach same hereto as Annexure "G";

4.4 The assets indicated to me was indeed mostly industrial shelves, which was subsequently not inventorised and never formed part of the auction catalogue. I accept that the aforesaid, consisting of mainly industrial shelves, are still at the premises;

4.5 Mr Du Plooy never indicated or informed me that he is the owner of any other assets at the premises of Global Group Auctions (Pty) Ltd.’ (Accentuation added.)

[11] The applicants have no real apprehension of irreparable harm and they have another remedy available to them, as the first applicant stated, the rei vindicatio.

Conclusion

[12] The evidence presented, the balance of convenience, and the interests of justice in casu are at odds with the granting of the application. The nature of the application is not certain. Although the notice of motion seems to portray an application for an interim interdict, the applicants, without any doubt, also want final relief from the court. The glaring reality is that the application is not only moot but that the applicants are not able to identify the property they want to interdict. They also do not know whether their property is still on the premises. In addition, there is an issue with ownership – they want unconstitutionally vague and wide access to the information of all the purchasers involved in the auction which has already occurred in August 2024, despite having alternative remedies in law available to them. Simply, they did not meet the requirements for an interdict and in light of the above, the application must fail as a whole, and costs must follow the cause.

Order

[13] In the result, the following order is made:

‘The application is dismissed with costs to be taxed on scale C’

OPPERMAN J

Appearances

For applicant: N van der Sandt Instructed by: Van der Berg Van Vuuren Attorneys Bloemfontein

For first respondent: P Zietsman SC Instructed by: Phatshoane Henney Attorneys Bloemfontein

- [1] Heads of argument for the applicant's para 6.
 - [2] Answering affidavit paras 2.1 and 2.2.
 - [3] Founding affidavit para 4.1.
 - [4] Founding affidavit para 4.13.
 - [5] In this regard, see *Setlogelo v Setlogelo* 1914 AD 221 at 227.
 - [6] The so-called *Plascon-Evans dictum* applies. In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*
- [1984] ZASCA 51; [1984] 2 All SA 366 (A) the Supreme Court of Appeal found that the rule formulated in *Stellenbosch Farmers' Winery and Another v Martell & Cie SA and Others* 1957 (4) SA 234 required clarification and qualification where final relief was sought in motion proceedings. The general rule is still that in proceedings where disputes of fact have arisen on affidavits, a final order, whether an interdict or some other form of relief, may be granted if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the court to give such final relief on the papers before it is, however, not confined to such a situation. In certain cases, denial by a respondent of a fact alleged by an applicant may not raise a real, genuine or bona fide dispute of fact. If the respondent in such a case has failed to apply for the deponent(s)

concerned to be called for cross-examination under rule 6(5)(g) of the Uniform Rules of Court, and if the court is satisfied as to the inherent credibility of the applicant's averments, the court may decide the disputed fact in the applicant's favour, without hearing oral evidence. Therefore, when factual disputes arise in motion proceedings, relief should be granted only if the facts stated by the respondent, together with the admitted facts in the applicant's affidavits, justify the order.

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Prepared on 10 October 2026 · Esheria