

SOUTH AFRICA / JUDGMENT

Jabula Bleggings (Pty) Ltd and Others v Van Der Nist and Others (2025/108623) [2025] ZAKZPHC 69 (30 July 2025)

[2025] ZAKZPHC 69

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

PC Bezuidenhout

CASE / FILE NUMBER

2025/108623

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

DIVISION, PIETERMARITZBURG

CASE

NUMBER: 2025-108623

In

the matter between:

JABULA
BLEGGINGS (PTY) LTD
FIRST
APPLICANT
STEPHANUS
VAN HEERDEN N.O.
SECOND
APPLICANT
MERLENE
VAN HEERDEN N.O.
THIRD
APPLICANT
And
GIDEON
JOHANNES VAN DER NIST
FIRST
RESPONDENT
MARA
VAN DER NIST
SECOND
RESPONDENT

PETER
SMITH
THIRD
RESPONDENT
KROMELLEMBOGEN
BOERDERY (PTY) LTD
FOURTH
RESPONDENT
RCL
FOOD LIMITED PONGOLA
FIFTH
RESPONDENT

JUDGMENT

PC BEZUIDENHOUT J:

- [1] The application was brought on an urgent basis on 18 July 2025 seeking relief that Fifth Respondent be directed to deduct certain input costs and transport costs from the proceeds of sugarcane harvests received from First to Fourth Respondents originating from the immovable property portion 85 of the farm Pongola 61 in extent 28,3463 hectares until such time as the possession of the aforesaid immovable property is returned to Applicants. The balance of the proceeds to be paid to the trust account of Hay and Scott attorneys in Pietermaritzburg. That upon finalisation of an action in the KwaZulu-Natal Division, Pietermaritzburg under case number 7337/2022P certain remaining proceeds be paid to Applicants. It further sought that the relief in paragraphs 2.1.1 and 2.1.2, that is the harvesting and the proceeds thereof, will operate as interim relief with immediate effect. The certificate of urgency was signed on 9 July 2025.
- [2] The First to Fourth Respondents opposed the application. Fifth Respondent did not oppose. The matter was set down on 18 July 2025 but was adjourned to 28 July 2025.
- [3] At the commencement of the hearing it was agreed between the parties that the counter application by First to Fourth Respondents would not be dealt with at this stage and that the issues which would be addressed would be that of urgency and that the matter has become *res judicata* and the interim relief which was being sought that the funds as set out in the notice of motion be held in the trust account of the attorney pending the finalisation of the application.
- [4] It appears that there is a long history of events between the various parties and other entities but for the purpose of this application it is in my view not necessary to deal therewith.
- [5] Portion 85 of the farm Pongola 61 was sold by the Trustees of the Stephanus Van Heerden trust represented by Stephanus van Heerden to First and Second Respondents with a buy-back clause in favour of the other. The purchase price was the sum of R1 100 000.00. The property was sold without any sugar cane agreement. The account with Eskom was

already transferred to First and Second Respondents. The buy-back option would be after a period of twelve years from the date of registration of transfer of the property to First and Second Respondents at the same price as the selling price together with all expenses in respect of agricultural improvements done to the property by First and Second Respondents. All costs and expenses in respect of replacement, maintenance of any pipes, all costs and expenses in respect of drainage, all costs and expenses in respect of the transfer of the property as well as granting of the sale agreement, the agreed amount of R 150 000.00 in respect of any interest payable and the costs of establishing sugar cane as at date of repurchase of the property were recorded in the said agreement. These are contained under special conditions in the agreement. If the Trust did exercise the option to repurchase then there were certain conditions relating to the removal of harvest. The parties further agreed that the property was to be used for farming activities until registration of transfer.

- [6] The Trust gave notice to First and Second Respondents of its decision to buy back the property, portion 85 in May 2022. Harvesting therefore had to be finalised by December 2022.
- [7] A dispute arose between the parties regarding monies due to First Applicant.
- [8] First and Second Respondents also leased two other portions of farmland from First Applicant but these two leases have both already come to an end. It is contended that there were arrear backpay which was payable to First Applicant and that this had not been paid.
- [9] An attempt has been made to resolve the issue and to do a debatement but this has been unsuccessful. The Eskom account was transferred back into First Respondents name on 3 May 2023. This relates to an electricity point to pump water. The whole of the Eskom account is now paid by Applicants while First Respondent makes use of the water to irrigate. There are various calculations as to alleged expenses and gross income which is also in my view not relevant to the issues

presently before court.

- [10] There are various contentions about the harvesting of the sugarcane and how it should have been done which also is not relevant to the issue before court at this stage. It was set out in the founding affidavit that Applicants had a prima facie right in respect of certain payments which have to be made to them and that there was a reasonable apprehension that if further monies are paid to First to Fourth Respondents it will cause irreparable harm to Applicants. The failure to transfer the property causes serious harm to Applicants. First to Fourth Respondents are collecting the proceeds of the harvest without admitting their liability. Applicants will be seriously prejudiced if the proceeds are paid to any of Respondents until a quantification has taken place. It is further contended that the balance of convenience favours Applicants and that they have no alternative remedy.

- [11] It was submitted that Applicants are entitled to monies to be received as it has always been the intention that there was money due by First to Fourth Respondents to Applicants from the farming and proceeds of the harvest from the farm. It was submitted that it was a common law interdict alternatively a mareva injunction.
- [12] In terms of the said agreement the seller had after the expiry of twelve years from date of registration of the property into the name of the purchasers the right to exercise the option to buy back the same property under certain conditions. Such notice to be given to the buyer during 2022.
- [13] The application was opposed by First to Fourth Respondents who indicated that Applicants were refusing to compensate them for improvements which they were contractually bound to do in terms of the agreement and that there was a repudiation of the buy-back agreement. It was contended that there was no urgency in the matter that they had more than a year to bring a properly motivated application and that the urgency was self created.
- [14] Further that it did not comply with the requirements for a Mareva injunction as they had to show that they had a prima facie case against First to Fourth Respondents and that said Respondents has an intention to defeat Applicants claim or to render it hollow by dissipating or secreting assets. These requirements have not been satisfied. The money which is spent is spent in the ordinary course of business by First to Fourth Respondents and that there is no mala fide dissipation of assets. It was submitted that such an application was launched in 2023 seeking to interdict the proceeds of the sugarcane harvest and that that application was dismissed with costs and that Applicants have to date not paid such costs. There was also an application for the sequestration of First and Second Respondents estate based on the same facts which was also dismissed
- with costs.
- [15] This application is substantially the same as the previous one and accordingly is an abuse of the process of court. It therefore sought relief that this be stayed which as I have set out above it was agreed will not be entertained at this stage. It was further submitted that the matter is *res judicata* in that on the same facts have already been dealt with on a judgment in case number 17989/2023P by Olsen J. The basis for the application was the same as this one and accordingly it has already been decided by the previous hearing. The application was dismissed on substantive merits on the previous occasion and was found by Mr. Justice Olsen that their approach was fundamentally flawed. It was not dismissed because it had become moot.
- [16] First to Fourth Respondents filed a supplementary answering affidavit which dealt mainly with the judgment of Olsen J in the previous hearing.
- [17] In the replying affidavit filed by Applicants they also deal with the judgment granted by Olsen J and the interpretation thereof.

- [18] It sets out that this application concerns the 2025 harvest as well as all harvests that follow until such time as the buy-back option has been finalised or the action has been finalised. First Respondent at the time of conclusion of the agreement was a director of Fourth Respondent who conducted the farming operations but that this is no longer so as he has resigned as a director of Fourth Respondent. Fourth Respondent has no contractual relationship with Applicants. It is contended that First Respondent, by resigning from Fourth Respondent, is attempting to distance himself from the proceeds of the harvest to frustrate Applicants claim relating to expenses. It is contended that First and Second Respondents are frustrating the buy-back agreement.
- [19] It was submitted on behalf of Applicants that the matter was urgent as it concerned the harvest for this year. I was referred to paragraph 149 the founding affidavit which sets out that the application by Applicants is to secure the proceeds of the harvest. It was submitted that it was intended that the crop was to be harvested and that the urgency commenced in the middle of June and that the papers were issued on 9 July 2025. The affidavit was signed on 2 July 2025 and that the payment for the harvest was due at the end of July 2025. Further that Applicants have paid the Eskom account and First Respondent has resigned from Fourth Respondent and that Applicants only had knowledge thereof at a late stage. I was referred to the wind deed form which indicates that the search was done on 8 June 2025 wherein it indicated that First Respondent had resigned as a director of Fourth Respondent. It was submitted that this led to this application being brought. It was therefore known during June 2025 that First Respondent had resigned. I will accept that as it was only established on 8 June 2025 that First Respondent resigned as director the matter is to be heard as one of urgency.
- [20] It was submitted that Applicants brought the application as soon as they could and that it was before court for the first time on 18 July
2025. The urgency was retained and payment has to be made. The Eskom accounts have been paid by Applicants and that it is a common law interdict as First Respondent had resigned and Third Respondent is now the sole director of Fourth Respondent. Third Respondent is not part of the buy- back agreement. The farming operation is conducted through Fourth Respondent of which First Respondent is no longer a director and that it was a sudden resignation to put the company in the sole control of Third Respondent. There was accordingly a prima facie right and a claim against First and Second Respondent. There is also a counter claim in the action which has been instituted. The crop is under the control of Fourth Respondent and the injury is continuous and that he is in absence of any alternative remedy. Once paid out it is unlikely that any claim of Applicants will be satisfied. Fourth Respondent does not have any immovable property. There are bonds registered over the said property. It is unlikely that any claims will be satisfied as there are large claims of R5 26 000.00, R1 700 000.00 and R 3 300 000.00.

- [21] It was submitted by Mr. Hattingh that twelve years ago the property was purchased by First and Second Respondents in their own name. There is a buy-back clause in the agreement as I have already set out which option after twelve years the seller can exercise. It did give notice to exercise that option. Applicants are acting as if they are the owners thereof. First and Second Respondents are still the owners and remain so at this stage.
- [22] It is submitted that it is different to the previous application as the resignation of First Respondent has made this application urgent. He however still remains an owner of the property and has built up large assets. It was submitted that there was indeed no urgency in this matter as it was also confirmed by Applicants that the wet conditions effected the harvesting. It was further submitted that they had not complied with the requirements of a mareva injunction and that they ignored the fact that the property is still registered in the name of First and Second Respondent. There is no basis why they will dissipate assets. Applicants have previously brought such an application which was dismissed and also sought to sequestrate First and Second Respondents which was also dismissed.
- [23] In reply it was submitted that Respondents are frustrating Applicants buy-back of the property. It was submitted that Applicants did not have to show any intent on the part of Respondents to dissipate the said money and accordingly an order was sought in terms of paragraphs 2 to 2.3 of the notice of motion.
- [24] Applicants in these proceedings is seeking a rule nisi with interim relief that certain funds which is obtained from the harvesting be held in trust by a firm of attorneys after the costs have been deducted pending the outcome of the action which had been instituted. The issue which arises is that although there was an agreement of sale which granted the Trust the right to buy-back the said farm after twelve years the farm was registered in the names of First and Second Respondents and accordingly is still so registered and is their property. It is common cause that there has been various discussion about the amount payable by Applicants to Respondents when the buy-back is to take place. It is also so that the option to buy back the said farm has been exercised but that there has been no agreement as to what the total amount would be to paid to First and Second Respondents. Exercising the option does not grant the Trust the right to the farm. First and Second Respondents remain the lawful owners of the said farm. The fact that Fourth Respondent maybe controlling the farming operations on the farm does not take away the fact that the farm belongs and is registered in the names of First and Second Respondents. The fact that First Respondent has resigned as a director of Fourth Respondent also does not affect his right as owner of the said property.
- [25] What Applicants are seeking is to interdict the income received from the operations of the farm. Their agreement for the buy-back as well as all other related payments to Eskom etc. were with First and Second Respondents. It is common cause and even on their own version, that from the commencement the farm was operated by Fourth Respondent. Fourth Respondent was never a party to the agreement between the Trust and First and Second Respondent. Any money which accordingly in terms of the agreements is due to Applicants

is to be paid by First and Second Respondent.

[26] In the previous application, which has been referred to, Olsen J held that:

"Insofar as the proceeds of the 2023 harvest are concerned it might have some significance with respect to subsequent harvest and may be entertained on that basis."

The judgment thus dealt with future harvests and was not dismissed because it was moot.

[27] It would seem that what is contended by Applicants is that the conduct of Respondents are hindering the buy-back of the said farm and accordingly there is a necessity for the relief claimed as they have a claim for compensation for damages or breach of contract in terms of the agreement which had been reached and due to the failure of Respondents to come to an agreement with them they are owed money and that there is therefore a real possibility that once the action is finalised there would not be money to compensate them.

[28] As I have already set out above the papers do not set out any reason or basis upon which it can be established that First to Fourth Respondents would dissipate funds or would be unable to compensate Applicants for any claim which they may have in due course if so proven. The farm is still registered in the names of First and Second Respondents and according to the papers they have made large investments and improvements for which they would have to be compensated and accordingly this would have to be taken into account if Applicants prove any claim against Respondents. They are also the persons against who Applicants claim lies.

[29] I have read and considered the judgment of Olsen J in the previous application and it appears to me that it is indeed very similar to the one before me. It was submitted on behalf of Applicants that the fact that First Respondent has resigned as a director of Fourth Respondent makes this application different and also the issue that Applicants have paid certain Eskom accounts. These two factors in my view do not make any difference to issue before court which was also before court on the previous occasion. The fact that First Respondent is no longer a director of Fourth Respondent does not affect any of his contractual responsibilities and further any amount which was paid to Eskom is a claim which Applicants would have against whichever of Respondents they think it is advisable to proceed. I am in agreement with the judgment of Olsen J. where he set out that the requirements in *Knox Darcy Limited v Jameson and Others* [1996] ZASCA 58; 1996 (4) SA 348 AD at 372 sets out the necessary requirements for an application of this nature to succeed. Especially where it states:

"However there would not normally be any justification to compel a respondent to regulate his bona fide expenditure so as to retain funds in his patrimony for the payment of claims, particularly disputed ones, against him."

[30] I am also in agreement with the view expressed by Olsen J that Applicants had nothing to do with the harvesting of the harvest in question or with maintaining them. There was nothing to compel First and Second Respondent to plant sugarcane on the farm after registration of

the property into their names. What Applicants do have, if there is any contractual breach, is a claim that they can institute and can be decided at the action which has already been instituted or in a further action which may be instituted or even certain amendments to the existing pleadings in that matter.

The following order is therefore made:

1. The application is dismissed with costs
2. First to Third Applicants are to pay First to Fourth Respondents costs jointly and severally the one paying the other to be absolved on scale (B).
3. The application by First to Fourth Respondents to strike out certain portions in the founding affidavit and the application to stay proceedings under case number 2025-108623 pending full payment by Applicants of the costs orders in case number 1789/2023P and 8724/2024P are adjourned sine die.

P C BEZUIDENHOUT J.

JUDGMENT

RESERVED:

28 JULY 2025

JUDGMENT

HANDED DOWN ELECTRONICALLY: 30 JULY 2025

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