

SOUTH AFRICA / JUDGMENT

Myburg N.O v Moolman and Others (2024/032378) [2025] ZAGPPHC 424 (30 April 2025) [2025] ZAGPPHC 424

COURT

North Gauteng High Court, Pretoria

BEFORE

Hershensohn AJ

CASE / FILE NUMBER

2024/032378

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII

Policy

FLYNOTES:

WILLS

AND ESTATES – Executor – Assets of estate –

Alleged

agreement to purchase Porsche for R75,000 – Respondent taking possession of Porsche after payment into estate bank

account – Arrangement with heirs to share balance of purchase price would have amounted to fraud on the estate

–

Lack of animus contrahendi – Executor retaining authority to manage and dispose of estate assets – Vehicle

has potential

to be of substantial value – Respondent ordered to return the Porsche to the executor – Administration

of Estate Act

66 of 1965.

REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,
PRETORIA
CASE NO: 2024-032378
1.
REPORTABLE: YES/ NO
2.
OF INTEREST TO OTHER JUDGES: YES/NO
3.
REVISED: YES / NO

DATE: 30 April 2025

In the matter between: JOHANNES
LODEWICUS MYBURG N.O.
APPLICANT
and
CORNELIUS
PETRUS FRANCOIS MOOLMAN
1ST RESPONDENT
THE
MASTER OF THE HIGH COURT
2ND
RESPONDENT
KELVIN
ROBERT FROST
3RD
RESPONDENT
ROBYN
SKYE FROST
4TH
RESPONDENT
MARIA
PETRONELLA FROST
5TH
RESPONDENT
MARIA
PETRONELLA FROST N.O.
6TH
RESPONDENT
LIZELLE
FROST N.O.
7TH
RESPONDENT

JUDGMENT

HERSHENSOHN AJ

INTRODUCTION

- [1] There are few occasions in one's existence as controversial as the time after one's passing, when the deceased's assets are divided up between his or her heirs.
- [2] It is unfortunately often a time which brings out the very worst in people, some conniving to gain an advantage from the deceased estate, or to snatch at the proverbial bargain.
- [3] It is often these situations which end up in the courts where a court is then required to look at, and undo, the muddle. This unfortunately is one such case.
- [4] As Mr Sullivan, acting for the executor in the late estate put it in his introduction to his argument: "If it floats like wood and its not a duck its probably a witch", this with reference to a well-known skit by Monty Python which takes a comedic look at how we as humans can twist logic in order to justify our own selfish desires and ambitions. The relevance of this twist in logic will become apparent later.

THE PARTIES

- [5] The applicant is JOHANNES LODEWICUS MYBURG N.O. in his capacity as the executor of the estate late James Ernest Frost (Identity No. 4[...]) and with estate reference number 4539/2022.
- [6] The first respondent is CORNELIUS PETRUS FRANCOIS MOOLMAN, an individual who, as will appear from the facts hereunder, purported to purchase a Porsche 911 T22 with registration number D[...], with VIN number 9[...] and engine number 6[...].
- [7] The first respondent purportedly purchased the Porsche from a grouping of the third to seventh respondents either collectively and/or individually under the circumstances as are set out hereunder. The application is at this stage only opposed by the first respondent.

NATURE OF THE RELIEF SOUGHT

- [8] As already alluded to above the applicant is the duly appointed executor of the estate of the late James Ernest Frost. He seeks an interim court order to essentially recover possession of a Porsche 911 T22 with registration number D[...] from the first

respondent who he contends obtained possession of the vehicle unlawfully. The nature of the relief appears interim and of an interdictory nature and pending action to be instituted to determine the genuine and valid ownership of the motor vehicle and if the damages are due to any of the parties.

THE APPLICANT'S PRINCIPAL CASE

- [9] From the outset the applicant contends that he retains exclusive authority under the Administration of Estates Act 66 of 1965, to manage and dispose of the estate assets.
- [10] The applicant further contends that the first respondent, during negotiations with the heirs and more particularly Ms Lizelle Frost, the seventh respondent, offered the sum of R300,000.00 for the Porsche via a series of WhatsApp messages. These were annexed to the papers as annexure “FA6” and are clearly not in dispute on the papers, nor were they disputed during the argument.
- [11] The sale agreement upon which the first respondent purports to rely is an agreement drafted, or at least populated, by the seventh respondent reflecting the purchase price not as R300,000.00 as was negotiated in the various WhatsApp messages but reflected the purchase price as the sum of R75,000.00 allegedly as partial payment to the estate with the remaining R225,000.00 to be paid directly to the beneficiaries and more particularly the second, third and fourth respondents.
- [12] The applicant contends that upon being presented with the agreement, he refused to sign the agreement for obvious reasons and more particularly that the written sales agreement did not constitute a true reflection of the basis upon which the sale would have taken place. This being that the asset would have been sold for the sum of R300,000.00 and to the benefit of the deceased estate.
- [13] Despite the refusal of the applicant to sign the agreement, the first respondent took possession of the Porsche after paying the sum of R75,000.00 into the estate bank account, claiming he had fulfilled the terms of the contract.
- [14] The applicant contends further that the true value of the Porsche is estimated to be some R1.5 million and the first respondent clearly exploited the estate in the manner in which he unlawfully obtained the Porsche.
- [15] Accordingly, the applicant seeks interim relief and states that he has:
- (a) a prima facie right since the estate was the lawful owner of the Porsche and that the executor had a duty to preserve its assets and similarly as I have alluded to above is the only party who is entitled to in law dispose of the assets of the late estate;
 - (b) that he had a real apprehension of harm in that the Porsche is a vehicle of high value and its value and integrity was at risk in that it was no longer in the possession of the estate or preserved in a fashion which would ensure that it would maintain its inherent value upon resolution of any further dispute;
 - (c) that the balance of convenience favoured him in that the interests of the estate to manage and dispose of the assets, outweighed the first respondent’s interests who in law has no valid claim to possess the Porsche as alleged or at all;

- (d) that he had no alternative remedy in that immediate court intervention was necessary to prevent the dissipation of a valuable asset in the deceased estate and potentially at the hands of the first respondent.

THE VERSION OF THE FIRST RESPONDENT

- [16] The first respondent contends in his papers that he entered into a binding sale agreement and relies on annexure “CM2”

in terms of which he contends that the agreement was for the purchase of the Porsche for the sum of R75,000.00 and in terms of the sale agreement signed by himself on 4 October 2023 drafted by the seventh respondent and handed to him. It is common cause between the parties that the agreement he relies upon was not signed by the applicant.

- [17] He contends that payment of the R75,000.00 was made into the estate’s bank account and that he took possession of the motor vehicle legally on 9 October 2023 and in terms of the abovementioned agreement of sale.

- [18] Furthermore, when discussing the basis upon which the agreement came into existence he contends that the seventh respondent, inter alia, acting as authorised agents of the estate presented him the sale agreement which he concluded, accepted the funds and as such when he took delivery of the Porsche a valid and binding sales agreement came into place. In this regard the first respondent contends that the applicant authorised the beneficiaries and trustees to market and sell the assets and that he as the purchaser relied upon their representations and had no prior knowledge of any internal estate disputes or alleged lack of authority. Simply put, the applicant’s failure to sign the agreement of sale did not invalidate the sale.

- [19] Albeit that the first respondent admits that initially the purchase price was agreed to be some R300,000.00, he further alleges that due to misrepresentations by Mr Viljoen who introduced the first respondent to the other respondents and more particularly the fourth respondent made certain misrepresentations to him insofar as the engine of the vehicle having been rebuilt. He further submits that after discovering that the engine was faulty he incurred some R180,000.00 in repairs and as such the final sales price of R75,000.00 reflected the vehicle’s true condition and was fair in the circumstances.

- [20] I must interject to make mention of the fact that it appears to me that the issue relating to the engine rebuild appears an afterthought and as will be dealt with hereunder the alleged purchase price paid of R75,000.00 was an attempt on his part to snatch at the proverbial bargain.

- [21] The first respondent further contends that the applicant’s interim interdict effectively seeks a final order and as such should not be entertained.

- [22] When discussing the issue relating to the further R225,000.00 owing to the beneficiaries, the first respondent denies owing the other beneficiaries the R225,000.00 and claims very simply that the sale agreement setting out the sum of R75,000.00 was properly and fully performed upon and as such binding.
- [23] Regarding the relief sought, the first respondent contends that there is no prima facie right in that the applicant could not prove unlawful possession as the first respondent lawfully acquired the motor vehicle through a concluded agreement.
- [24] The first respondent further contends that the balance of convenience favours the respondent who invested in repairs and preserved the Porsche and that returning it to the estate risks mismanagement by financially strained beneficiaries.
- [25] The applicant should instead pursue a damages claim against the beneficiaries or resolve the ownership issue via action proceedings and not an interim interdict.

KEY ISSUES IN DISPUTE

- [26] The very cornerstone of Mr. Sullivan's argument was with reference to annexure "FA8" (the same as annexure "CM2") being the agreement of sale. He immediately pointed out that in terms of paragraph 1.1 of the sale agreement, the seller is clearly identified at clause 1.1 as Johannes Lodewicus Myburg N.O. in his capacity as executor in the estate late James Ernest Frost (Identity No. 4[...]) and with estate number 4539/2022.
- [27] He further identified that the bank account into which the purchase price was to be paid was indeed the bank account of the estate late JE Frost held with Nedbank, a savings account with account number 9[...] and with branch code 1[...].
- [28] He again referred to the facts that the sale agreement was signed by the first respondent, however, it was not signed by the applicant. Again the fact that the applicant did not sign the agreement is common cause between the parties.
- [29] He further then indicated that the agreement was signed by the first respondent on 4 October 2023 and then immediately referred me to paragraph 14.2 in the answering affidavit[1]
- [30] According to Mr. Sullivan this version is quite simply not true when one considers the agreement which was signed by the first respondent and wherein the applicant's details are very clearly set out.
- [31] Mr. Sullivan further went on to submit that the only person entitled to dispose of the deceased's property in a deceased estate is in fact the executor and is such in terms of the provisions of section 13 of the Administration of Estates Act. In conjunction with this, Adv. Sullivan argued further that in terms of the trite principle *nemo plus juris*, no person could give another person more rights than he himself had and in respect of property. As I have alluded to above, Mr. Sullivan also took me through to annexure "FA6" which appears not in dispute and which very clearly records the negotiations between the parties that the vehicle

would be sold for some R300,000.00 and not R75,000.00. This being the case, Mr. Sullivan argued that no sale agreement came into existence and as such the motor vehicle still vested in the deceased estate.

[32] In his argument and in turn Mr Birkholtz acting on behalf of the first respondent premised his argument principally on the following:

[33] Relying on annexure “FA5” being an e-mail dated 15 September 2023 dispatched by Ms S Kellerman on behalf of Theron Jordaan & Smit Attorneys and to inter alia the applicant and the seventh respondent that the said e-mail constituted a mandate, mandating the heirs of the deceased as agents to dispose of the movable vehicle and on behalf of the executor. In this regard he contends that the following contentions are of importance:

“Johan het versoek dat ons hierdie epos rig ten einde te verseker dat die korrekte prosedures gevolg word.

Ons het u voorsien van ’n pro-forma koopkontrak ten einde die bates te verkoper – die verkoper op die kontrak is Johan in sy hoedanigheid as eksekuteur.

Die verloop van verkope moet as volg gebeur uitgesluit die los parte:

1. Koper onderteken kontrak, welke aan ons voorsien word;
2. Johan sal met samesprekings elke belanghebbende party se toestemming kry nadat die aanbod bespreek en aanvaar is, waarna hy die ooreenkoms sal teken;
3. Koopprijs moet eers betaal word in die boedel rekening alvorens die voertuig of motorfiets of ander bate aan die koper oorhandig word.

Ons bevestig dat Johan nog geen ooreenkoms onderteken het nie en verstaan ons dat daar al redelik van die bates verkoop is.

In die vooropstelling ontvang ons dringend die koopkontrakte soos ontken deur die koper tesame met bewys van betalings. Ons het verder meer verneem dat daar ’n koper is vir die vliegtuig, welke aanbod asseblief ook deurgegee moet word.”

[34] I must respectfully disagree with Mr Birkholtz’s contentions.

[35] In this regard the letter is in my mind clear and is clearly not a mandate to sell the property on behalf of the executor. Of particular importance is unnumbered paragraph 2 wherein it is very clearly said that the offer received will be discussed with each interested party and if accepted, he will then sign the relevant agreement. This, with respect does not tie into the version of the first respondent.

[36] In this regard it is trite that a party who wishes to rely on an agency must allege and prove the existence and scope of the authority of the alleged agent, whether express or implied. In this regard relevant authority on this point can be found in the matter of *Glofinco v Absa Bank Ltd t/a United Bank* 2002 (6) SA 470 (SCA).

[37] In the abovementioned case the Supreme Court of Appeal held as follows:

“[13] A representation, it was emphasised in both the NBS case supra, must be rooted in the words or conduct of the principal himself and not merely in that of his agent (NBS Ltd v Cape Produce Globe (Pty) Ltd (supra at 411H-I). Assurances by an agent as to the existence or extent of his authority

are therefore of no consequence when it comes to the representation of the principal inducing a third party to act to his detriment. In the instant case counsel for the appellant relied principally on the very appointment by the Bank of Horne as its branch manager, thereby enabling her to impress upon Braude that she was duly authorised, when in fact she was not, to commit the bank to stand surety for Playtime’s post-dated cheques; this impression was reinforced, so it was further contended, by the fact that eight earlier cheques of Playtime that Horne had marked ‘goods for funds’ had been met by the bank by the time Horne stood surety on its behalf of the last of the series of cheques.”

(own underlining)

[38] As the Supreme Court of Appeal found, the representation must be rooted in the words or the conduct of the principal himself and not merely that of his agents.

[39] When one considers annexure “FA5”, the e-mail which is relied upon, albeit sent to the applicant himself as well, was not an e-mail under the hand of the applicant, but rather a recordal of a process to be followed. This in the first place.

[40] In the second place, a very clear reading of the letter in context makes it very clear that all that was required was the obtaining of a signed purchase agreement (in essence constituting an offer to the deceased estate) which would be discussed with the relevant parties and then either accepted or rejected by indicating the signature of the applicant (in the case of acceptance of the applicant) and on the sale agreement. This was not the case in the matter before me. When confronted with this Mr Birkholtz initially conceded that the sale agreement constituted an offer by the first respondent to purchase the vehicle, but then later appeared to rely upon the paragraph of “FA5” wherein it is recorded that: “Ons bevestig dat Johan nog geen ooreenkoms onderteken het nie maar verstaan ons dat daar al redelik van die bates verkoop is.”

[41] This statement does not assist the first respondent either. The date of the e-mail is 15 September 2023 and if one is to accept for the moment that by means of agency, the agreement was concluded by the signature of the first respondent on the sales agreement, this took place ex post facto the letter of annexure “FA5” on 4 October 2023 and as such would again necessitate the agreement having to follow the procedure set out in that letter prior to the sale being accepted on the part of the applicant.

[42] When confronted about the issues relating to the difference in purchase price between the negotiations which appeared common cause per annexure “FA6”, I was referred to an e-mail chain as per annexure “CM5” and which starts at page 02-137. The appropriate portion upon which Mr Birkholtz relied is to be found at page 02-143. In this regard, on 2 October the seventh respondent writes an e-mail to the first respondent and records as follows:

“Ek verstaan William het vir jou verduidelik dat daar ’n bewys op die boedellêer moet wees vir die verkope.

Hiermee die ooreenkoms as jy dit asseblief sal parafeer op elke bladsy en op die laaste bladsy teken.

Stuur per epos terug aan my.”

[43] In answer to this the first respondent replies very simply as follows:

“Hallo Lizelle

Maak asb. net seker van al die detail op die kontrak.

Groete

Corrie”

[44] As I understand the argument of Mr Birkholtz, this was with relation to the fact that the purchase price inserted in the contract was for the sum of R75,000.00. This again relates to the later dispute between the other respondents and the first respondent wherein it appears that they had concocted a scheme in terms whereof R75,000.00 of the purchase price of R300,000.00 would be paid into

the estate bank account and the balance of R225,000.00 would be divided up between the other respondents.

[45] Suffice to state that such an arrangement between the heirs and the first respondent and absent the applicant as executor in the deceased estate would amount to a fraud on the deceased estate. This behaviour by the various parties, is at best unsettling. I am however not required or asked to make any findings on this point but I do raise it as it does demonstrate whether or not the version of the first respondent ought to be accepted, as I will deal with hereunder.

[46] Ostensibly, noticing that the sale agreement only contained the R75,000.00 which was to be paid to the estate, and no further details as to the payment of the balance of the R300,000.00, the deal contained in the unsigned agreement was simply snatched up by the first respondent, who clearly never intended to pay the full purchase price.

[47] This also eats at the heart as to whether or not there was animus contrahendi, in other words an intention to contract between both parties. As the Supreme Court of Appeal put it in the matter of Kgopana v

Matlala (1081/2018) [2019] ZASCA 174 (2 December 2019):

[11] Importantly, true agreement or consensus can generally only be determined by an examination of the external manifestations of the intention of the respective parties. As it is put in Christie's Law of Contract of South Africa at 31:

'In the result, it is correct to say that in order to decide whether a contract exists one looks first for the true agreement of two or more parties, and because such agreement can only be revealed by external manifestations one's approach must of necessity be generally objective.'

The author also aptly explains the application of these principles to the concept of animus contrahendi in these terms:

'In this context, the phrase "lack of animus contrahendi" is appropriate to describe those cases in which, from the circumstances or manner in which the "offer" was made, or both, it is clear to the court and was, or ought to have been, clear to the offeree that the offer was not intended to be taken seriously.'

[48] It is clear that the applicant was prepared to dispose of the vehicle for the full value of R300,000.00. When presented with the written sale agreement in terms of which the purchase consideration had been reduced to some R75,000.00 albeit by fraud or by negligence, the fact remains that the applicant was not prepared to bind the estate in the agreement for a sum substantially less than was agreed to in the previous negotiations. As such, there could never have been an intention on behalf of the applicant to engage in the contract and to as such conclude a contract, this emphasised by the fact that he refused to sign the agreement.

[49] If one is for the moment obliged to accept the first respondents version that the seventh respondent was acting as an agent for the applicant in concluding the agreement, then on this version too there was animus contrahendi since she at all material times intended to sell the vehicle for R300,000.00 divided between the estate and the heirs, and not for R75,000.00, as recorded in the written agreement. Again assuming that this scheme was not in fraud of the deceased estate.

[50] The scheme between the heirs, if seen as a fraud on the deceased estate in fact makes things even worse for the first respondent, being aware of, and as such a party to the scheme, albeit he did not bind himself to the scheme when he saw the out to simply pay the R75,000.00 and is as such also of no assistance to the first respondent.

[51] This being the case, it must follow that the first respondent is not lawfully in possession of the Porsche in that he never acquired ownership thereof as alleged or at all.

- [52] One of the final debates I had with Mr Birkholtz, who argued his client's case well in my opinion, was with regards to whether or not there was a factual dispute on the papers. In short, as I understood the argument of Mr Birkholtz, there was a factual dispute on the papers and this could only be resolved once the trial had commenced and that as matters stood the entire matter should simply be considered at trial.
- [53] I posed the question to Mr Birkholtz several times relating to whether or not he wanted to have the matter referred to oral evidence or to trial. In both instances he indicated that he would rather dispose of the matter on the papers and insofar as the application is concerned.
- [54] The issues dealing with the dispute of facts in motion proceedings are trite and are applied in the well-known matter of Plascon-Evans Paints Ltd v Van Riebeecks Paints (Pty) Ltd [1984] ZASCA 51; 1984 (3) SA 623 (A) at 635C. The basic premises is that the court has to accept the facts alleged by the respondent unless those facts are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers. This principle obviously applies to final interdicts.
- [55] In accordance with this the Supreme Court of Appeal has ruled in National Scrap Metal Cape Town (Pty) Ltd and another v Murray & Roberts Ltd and others 2012 (5) SA 300 (SCA) at 307D para 21 that:

"As the High Court was called on to decide the matter without the benefit of oral evidence, it has to accept the facts alleged by the appellants (as respondents below). Unless there were 'so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers'..."

- [56] The Supreme Court of Appeal went on further in para 21 as follows:

"... An attempt to evaluate the competing versions of either side is thus both inadvisable and unnecessary as the issue is not which version is the more probable but whether that of the appellants is so far-fetched and improbable that it can be rejected without evidence."

- [57] The test applied in an application for an interim interdict such as the present, is an even lighter test than the above, and is the test formulated by Claydon J in Webster v Mitchell 1948 (1) SA 1186 (W) at 1184, where he found as follows.

"(T)he right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is 'prima facie established through open and to some doubt', that is enough... The proper manner of approach I consider 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 the trial. The facts set up in contraction by the respondent should then be considered. If serious doubt is thrown upon 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 to be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief."

- [58] Even on the more stringent test prescribed by Plascon Evans, the first respondent's version can simply be rejected out of hand.
- [59] The first respondent's version appears in several regards to be an afterthought. A mere explanation, and as referred to in the introductory paragraphs through this judgment an attempt to twist logic in order to justify what took place.
- [60] In this regard, and considering the first respondent's version, to, on the first account contend that the e-mail per annexure "FA5" constituted a mandate and as such he concluded a valid agreement with the agents on behalf of the deceased estate is so untenable that it can be rejected out of hand, let alone that the applicants version can be accepted prima facie, even open to some doubt..
- [61] Similarly, the explanation provided by the first respondent as to why the purchase price suddenly diminished from some R300,000.00 to the R75,000.00 he paid, as an afterthought he contended that ex post facto the conclusion of the agreement he had to effect repairs to the motor vehicle's engine amounting to some R180,000.00, and as such the R75,000.00 was fair and reasonable, which version, is similarly clearly untenable and far-fetched that it can again, on the more stringent test for a final interdict, be rejected out of hand. Again, on the more appropriate test, the first respondents version does not throw serious doubt upon the applicants contentions as set out in the founding affidavit.
- [62] In my view these were the two key disputes around which the entire matter revolved.

CONCLUSION

- [63] Where does this leave the applicant. The applicant appears to from the papers at least, be extricated from the ploy to dispose of the motor vehicle. From what is clear on the papers, the applicant was and continues to exact his duties as the executor of the late estate of Mr Frost within the ambit of the law and the relevant statutory provisions. After all, as an attorney, he is first
- and foremost an officer of the Court.
- [64] Nothing in the papers convincingly demonstrates otherwise or that he was a party to the scheme alluded to above.
- [65] In any event, it is common cause between the parties that the applicant did not sign the sale agreement and in simple terms it must be that in this regard, at least on a prima facie basis, the ownership of the motor vehicle still vests in the deceased estate and as such under his control.
- [66] I used the word prima facie purposely. It is clear in the papers of the applicant that the applicant at this stage merely seeks interim relief. As such I only have to be convinced that the applicant has a prima facie right to the motor vehicle, even open to some doubt.

- [67] On trial and with the luxury of viva voce evidence, it may turn out otherwise but with what is before me I am satisfied that insofar as the prima facie right is concerned, this has properly been established.
- [68] This then brings the next aspect and relating to the reasonable apprehension of harm. It is common cause that the motor vehicle concerned has the potential to be of a substantial value. Furthermore, being a motor vehicle it is easily disposed of, can easily be damaged and in such circumstances will leave the deceased estate with nothing from which to benefit.
- [69] During argument Mr Birkholtz conceded that the first respondent on instruction of his attorney was simply storing the vehicle and had taken no further attempts to restore the vehicle other than what had been done prior to the institution of these proceedings. This being the case, it is also clear that the balance of convenience would favour the applicant. It is not as if, placing the vehicle under the supervision and control of the executor, the party in whom the vehicle actually vests statutorily, will result in any prejudice to the first respondent and in terms of the said concession.
- [70] This then leaves the only other aspect remaining, the absence of an alternative remedy. I am again satisfied that the vehicle indeed needs to be secured to the benefit of all parties. Who better to secure the vehicle than the person in whom and in law it vests and pending finalisation of any dispute between the parties, resolving this issue. I agree that pending an action which these days, potentially can take several years to come before the court, leaves the applicant with no other remedy to prevent the asset from

being dissipated and in due course.

COSTS

- [71] Since the relief that is sought is of an interim nature, one would probably be inclined to consider reserving the issue of costs for determination in the main case.
- [72] However, the behaviour of the first respondent with regards to the manner in which the purported transaction was concluded and carried out concerns me.
- [73] This can no better be demonstrated than his contention in his answering affidavit at paragraph 14.2 thereof that he had never been aware of the existence of the applicant until 9 October 2023 when this was in direct contrast with the document he had signed and dispatched to the seventh respondent on 4 October 2023.
- [74] As such, I do not find myself inclined to exercise my discretion with regards to costs in any other form than allowing the costs to follow the outcome of this case and as will be set out hereunder.

ORDER

I accordingly make the following order:

- (1) Immediately upon service of this order on the first respondent, the first respondent is ordered to return possession of the Porsche 911 T22 with registration number D[...], VIN number 9[...] and engine number 6[...] to the applicant, at 9[...] V[...] R[...] Avenue, S[...], North West Province or such other address as identified by the applicant in writing;
- (2) This order serves as an interim order with immediate effect pending the finalisation of an action to be instituted by the applicant within thirty court days from the granting of this order, inter alia, for the determination of the ownership of the motor vehicle referred to in (1) above;
- (3) In the event that the first respondent fails to adhere to the content of paragraph (1) above, the sheriff of the relevant division of this court is authorised to attach the motor vehicle referred to in paragraph 1 of this order and to return same to the possession of the applicant and at 9[...] V[...] R[...] Avenue, S[...], North West Province;
- (4) The first respondent is ordered to pay the costs of this application on an attorney and client scale.

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on this 30 April 2025.

Appearances

Counsel for the Applicant:

Adv. JF Sullivan

instructed by

Theron, Jordaan & Smit Incorporated

81 Buffeldoorn Road

Wilkoppies

Klerksdorp

Counsel for the First Respondent: Adv. FW Birkholtz

Instructed by

Hayton Attorneys

38 Ingersol Road

Lynnwood Glen

Pretoria

Date of Hearing:

23 April 2025

Date of

Judgment:

30 April 2025

[1] In this regard, in paragraph 14.2 the first respondent records under oath as follows: “In this regard I wish to point out that I only found out on the 9th October 2023 that the aforementioned vehicles belonged to the estate late. Prior to then I had never heard of Mr Myburg. I further confirm that I was only on the 9th October 2023 informed by Mr Viljoen, in the presence of the fifth respondent that the Porsche belonged to the late estate.”

[1] In this regard, in paragraph 14.2 the first respondent records under oath as follows:

“In this regard I wish to point out that I only found out on the 9th October 2023 that the aforementioned vehicles belonged to the estate late. Prior to then I had never heard of Mr Myburg. I further confirm that I was only on the 9th October 2023 informed by Mr Viljoen, in the presence of the fifth respondent that the Porsche belonged to the late estate.”

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2025/424.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/myburg-no-v-moolman-and-others-unknown-topic-agpphc-2025>

Prepared on 8 October 2026 · Esheria