

SOUTH AFRICA / JUDGMENT

Nicolaou v Angeliniadis N.O and Others (2024/091766) [2024] ZAGPJHC 782 (22 August 2024) [2024] ZAGPJHC 782

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

2024/091766

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
LOCAL DIVISION, JOHANNESBURG)

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED.

22

August 2024

Case

No. 2024-091766

In

the matter between:

NICOLAS
NICOLAOU
Applicant
and
MATINA
ANGELINIADIS NO
First
Respondent
MEYER
AND MEYER PROPERTIES (PTY) LTD
Second
Respondent
STYLIANE
LUIZINHO
Third
Respondent
MARIA
NICOLAOU
Fourth
Respondent
MARIA
NICOLAOU NO
Fifth
Respondent
THE
MASTER OF THE HIGH COURT
Sixth
Respondent
REGISTRAR
OF DEEDS, JOHANNESBURG
Seventh
Respondent

JUDGMENT

WILSON J:

1 On 20 August 2024, the applicant, Mr. Nicolaou, approached me in my urgent court seeking an interim interdict to restrain the sale and transfer of Portion 4 and the Remaining Extent of Erf 3[...] L[...] T[...] (“the property”) to the second respondent, Meyer Properties. After hearing argument, I refused the interdict, and ordered Mr. Nicolaou to pay the costs of the application on the party and party scale “B”. I indicated at the time that I would give my reasons in due course. These are my reasons.

2 The property is presently owned by the estate of the late Christos Nicolaou, who was Mr. Nicolaou’s father. The first respondent, Ms. Angeliniadis, is the executrix of that estate. The third and fourth respondents, Ms. Luizinho and Ms. Nicolaou are, like Mr. Nicolaou, heirs to that estate. Ms. Nicolaou is Mr. Nicolaou’s mother. In addition to being cited in her capacity as an heir,

Ms. Nicolaou is also cited as the executrix of the estate of the late Theodoulos Lucky Nicolaou, who was Mr. Nicolaou's brother, and who was, until his death on 11 December 2020, also an heir to Christos Nicolaou's estate.

3 The property is a tenanted commercial building which Mr. Nicolaou managed on his father's behalf for 35 years. Over this lengthy period Mr. Nicolaou developed the expectation that he would inherit the property on his father's death. Christos Nicolaou died intestate on 19 May 2020. The rules of intestate succession meant that Mr. Nicolaou had the right to inherit a portion of his father's estate, but he had no specific right to inherit the property, and the value of his share of the estate was in fact significantly less than the value of the property.

4 This meant that, if he wanted to take ownership of the property, Mr. Nicolaou would have to buy it from the estate at a price discounted

by the value of his intestate inheritance. Despite having been given multiple opportunities over at least two years to raise the finance necessary to fund that purchase, Mr. Nicolaou was unable to do so before Ms. Angeliniadis decided, in September 2023, to seek other purchasers of the property. The best offer she received was from Meyer Properties, in the sum of R6 million.

5 Ordinarily, the heirs to an estate must agree to any sale or disposition of its assets. However, Mr. Nicolaou would not agree to sell the property because, notwithstanding his failure to raise the finance necessary to purchase it, he saw it as his rightful inheritance.

6 In light of Mr. Nicolaou's opposition to the sale, and having secured the consent to the sale of Christos Nicolaou's other heirs, Ms. Angeliniadis approached the sixth respondent, the Master, to authorise the sale of the property in the absence of Mr. Nicolaou's consent. The Master is empowered to authorise the sale under section 47 (b) of the Administration of Estates Act 66 of

1965. Section 47 (b) states that the executor of a deceased estate may sell the property of the estate in such a manner and on such conditions as the Master may approve if the "heirs are unable to agree on the manner and conditions of the sale".

7 The Master authorised the sale on 4 June 2024. Aggrieved by the Master's decision, Mr. Nicolaou applied to me for an interim interdict restraining the sale and transfer of the property to Meyer Properties pending a review of that decision.

8 I refused that relief because Mr. Nicolaou could point to no facts from which I could infer that he is entitled, even *prima facie*, to set the Master's decision aside. Such facts were an essential ingredient of any entitlement he may have had to an interim interdict.

9 It was first suggested that the Master's decision was tainted by the fact that Ms. Nicolaou's consent to the sale of the property was given under the undue influence of the other heirs. However, apart Mr. Nicolaou's say-so, there was no basis for reaching that conclusion on the founding papers. Ms. Nicolaou in fact deposed to an affidavit in opposition to the application, in which she says she needs the sale of the property finalised quickly so that she can draw her share of the estate. Ms. Nicolaou is 84 years old and intends to use the money to pay for a full time

carer, which she says she can no longer live without.

10 Ms. Nicolaou now lives in Cyprus and apparently has a poor command of English. But her affidavit is counter-signed by a Cypriot certifying officer (the equivalent of a commissioner of oaths), who warrants that the contents of the affidavit have been explained to Ms. Nicolaou, and that she understands them. A certifying officer has also confirmed that Ms. Nicolaou understood what she was doing when, a year ago, she consented to sell the property to Meyer Properties.

11 There is accordingly no discernible substance in the undue influence point.

12 It was then contended that the Master had insufficient regard to the fact that, after the sale agreement between Ms. Angeliniadis and Meyer Properties had been concluded, Mr. Nicolaou offered to purchase the property for R50 000 more than the amount agreed with Meyer Properties. However, as is clear from the papers, Mr. Nicolaou's offer was only made well after the 31 August 2023 deadline for the submission of his bid to purchase the property had expired. The papers also disclose that Meyer Properties made a cash offer, while Mr. Nicolaou was unable to say how he intended to fund the purchase of the property and would almost certainly have needed commercial finance to do so. There is no indication on the papers of whether or when this finance would be in place.

13 Accordingly, although it was marginally higher, the fact that Mr. Nicolaou's offer was both late and unsupported by either the cash on hand or the financial guarantees to make good on it was reason enough to disregard it. In light of this, there is no prospect of the Master's decision being impugned on the basis that he failed to attach the appropriate weight to Mr. Nicolaou's offer.

14 Finally, it was argued that Ms. Angeliniadis' administration of the estate was tainted by bias against Mr. Nicolaou's interest in purchasing the property. Even if such bias would vitiate the Master's decision, there is no trace of it on the papers. Mr. Nicolaou supported Ms. Angeliniadis' appointment as the executrix of the estate. His complaints of bias are wholly unsubstantiated. They emerged only once Ms. Angeliniadis made clear that she was not prepared to wait indefinitely for Mr. Nicolaou to place himself in the position to purchase the property.

15 In her papers, Ms. Angeliniadis suggests that Mr. Nicolaou has conducted himself as if the property is already his, or at least as if he has an unconditional right to take it for himself, no matter what the other heirs to the estate might want or need. I think that is a shrewd assessment of Mr. Nicolaou's approach to the property, and to these proceedings. It is no indication of bias.

16 While I have some sympathy for Mr. Nicolaou, in that he has clearly and understandably become attached to the property during the decades in which he has managed it, the reality is that the property is not exclusively his. Its value must be realised for the benefit of all the heirs to his father's estate, including his apparently frail and ailing mother. The question is really whether there is any reason to think that the Master conducted himself unreasonably or unlawfully in concluding that the sale of the property to Meyer Properties was an appropriate way of achieving that purpose. On the papers before me, there was no such reason.

17 Accordingly, I dismissed Mr. Nicolaou's application. I was satisfied that the factual complexity of the case, and the speed at which it was litigated, justified an award of counsel's costs on the "B" scale.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 22 August 2024.

HEARD ON: 20 August 2024 DECIDED ON: 20 August 2024

REASONS:

22 August 2024 For the Applicant: Instructed by M Amojee Hajibey-Bhyat & Mayet & Stein Inc For the First, Third Fourth and Fifth Respondents: H Saldulker Instructed by Pincus Matz Attorneys For the Second Respondent: G Ferrar Otto Krause Inc

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Prepared on 11 October 2026 · Esheria