

SOUTH AFRICA / JUDGMENT

O.K.M v L.P.M and Others (2024/061379) [2024] ZAGPPHC 982 (27 September 2024)

[2024] ZAGPPHC 982**COURT**

North Gauteng High Court, Pretoria

BEFORE

Nyathi

CASE / FILE NUMBER

2024/061379

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION,****PRETORIA****CASE****NO: 2024/061379****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED: NO****Date:**

27 September 2024

Signature:

In

the matter between: O[...]
K[...] M[...]
Applicant
And
L[...]
P[...] M[...]
First Respondent
TSHEPO
JOHANNES MATJEE
Second Respondent
RE/MAX
HORIZON HARTEBEEESTPOORTDAM
Third Respondent
ESTATE
AGENTS

JUDGMENT

NYATHI J

A.

INTRODUCTION

[1] The applicant seeks an order as a matter of urgency interdicting the first and second respondent from selling, alternatively transferring the matrimonial home pending the outcome of the divorce action which

she has instituted against the first respondent on 25 April 2024 under case number 2024-045858.

[2] The applicant alleges that the first respondent has appointed the second respondent and other persons and corporate entities as his fronts in order to enable him to acquire assets in such a manner that his identity as the owner of such assets is hidden from the public and particularly from the applicant.[1]

[3] The applicant and the first respondent were married to each other out of community of property with the inclusion of the accrual system on 14 December 2015 at Brits, which marriage still subsists.[2]

[4] The applicant states that the marriage between her and the first respondent has irretrievably broken down resulting in her instituting

the divorce action. She has joined in the divorce action the second respondent and a number of other persons and corporate entities all of whom have participated in a scheme to hide the assets of the first respondent in order to deprive the applicant of her rightful share of the estate of the first respondent.[3]

B.

BACKGROUND

- [5] The first respondent arranged for the matrimonial home to be built in 2019 and 2020. Upon its completion, the applicant and first respondent took occupation of the matrimonial home on or about 27 August 2021 on the basis that it was the matrimonial home which was provided by the first respondent, and they have resided in the matrimonial home ever since. They continue to reside in the matrimonial home although the marriage has broken down as mentioned above.
- [6] The funds which were utilised for the acquisition and construction of the matrimonial home were obtained from the corporate entities referred to in the divorce action. The first respondent appointed the second respondent as a director of some of the corporate entities.
- [7] The matrimonial home which the first respondent has caused to be constructed is a luxurious home which has substantial value. The property referred to as the matrimonial home is situated at 6[...] M[...] Way, Xanadu Nature Reserve Estate, Hartbeespoort, North-West.
- [8] The first respondent caused the matrimonial home to be registered in the name of the second respondent. The second respondent is merely a front for the first respondent, as mentioned above. He did not make any contribution whatsoever to the acquisition and construction of the matrimonial home and has no right to it whatsoever. The applicant believes that the second respondent is not even aware that he is registered as the owner of the matrimonial home.
- [9] The reason that the matrimonial home was so registered in the name of the second respondent was to hide the fact that the first respondent is in fact the owner of the matrimonial home.
- [10] The applicant believes that the first respondent devised and initiated such a deliberate scheme because he was aware that their marriage may well end in divorce and that the applicant would then be entitled to a share of the accrual of his estate. He wished the matrimonial home to be excluded from his estate so that it would not be included in the calculation of the accrual of his estate upon divorce. This is particularly so because there are no excluded assets in terms of the ante-nuptial contract concluded between applicant and the first respondent.
- [11] On 13 May 2024 (after service of the divorce summons upon the first and second respondents respectively on 26 and 29 April 2024), the applicant discovered that the second respondent had given a mandate to the third respondent to list the matrimonial home for sale for the purchase price of R6 850 000.00 (Six Million Eight Hundred and Fifty Thousand Rand).

- [12] The applicant has ascertained that the third respondent has listed the matrimonial home for sale on Property24.com. The third respondent has taken numerous photographs of the matrimonial home (which were taken clandestinely during the applicant's absence, and with full knowledge and cooperation of the first respondent), and clearly has a mandate to sell the property on behalf of the second respondent and are proceeding to do so.
- [13] The applicant has annexed a link of the matrimonial home's listing under the following URL: h[...].
- [14] The applicant submits that if the matrimonial home is sold in such manner, the proceeds will be paid to the second respondent and will be dissipated for all intents and purposes as an asset of the first respondent.
- [15] The applicant will accordingly suffer irreparable harm and prejudice if the sale should proceed.
- [16] The applicant has not been able to ascertain whether the matrimonial home has already been sold or whether it is about to be transferred. However, this can take place within a very short period, and it is accordingly necessary for her to approach the Court as a matter of urgency, she submits.
- [17] The defence of the first and second respondents is a bare denial that any fronting has occurred.
- [18] The objections of non-joinder of the bank are misplaced and are of no consequence.
- [19] For his part, the second respondent does not explain how he acquired the property for R3 500 000 and obtained a bond of R2 100 000 from Absa, when he is employed as a general worker with a monthly income of R4 000. The applicant has provided proof by way of annexure "RA8".[4]

C. REQUIREMENTS FOR AN INTERLOCUTORY INTERDICT

[20] To succeed in obtaining an interlocutory interdict, the applicant must prove:

20.1 A prima facie right.

20.2 A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is ultimately granted.

20.3 The balance of convenience favours the granting of the interim relief; and

20.4 The absence of any other satisfactory remedy.[5]

D. DELIBERATIONS

[21] As regards the prima facie right, the respondents deny that the first respondent is the beneficial owner of the property. In *Webster v Mitchell*[6] it was held that the test is established if it is "prima facie established though open to some doubt".

[22] Mr Segal referred to the matter of SM v JM[7] wherein the applicant sought urgent interdictory relief preventing the first respondent and the second respondent (“the Respondents”)

from selling or disposing of the erstwhile matrimonial home, pending the finalization of the divorce proceedings between the applicant and the first respondent. Here too the parties had been married out of community of property with the accrual system. The interim interdict was granted. Clearly the facts and circumstances of this matter was “on all fours” with the instant case.

E. CONCLUSION AND ORDER

[23] The applicant has made a case for the relief that she seeks. Having regards to the facts in this case, I am persuaded that all the requirements for an interim interdict referred to above have been met. The applicant is thus entitled to urgent relief.

[24] The general rule where costs are concerned is that costs follow the outcome. Nothing suggests that a departure is warranted. Accordingly, the following order is made:

(i) The first, second and third respondents are interdicted and restrained from alienating, hypothecating, encumbering, disposing of or transferring the immovable property situated at 6[...] M[...] Way, Xanadu Nature Reserve Estate, Hartbeespoort, North West, pending the outcome of the divorce action instituted by the applicant against the first and second respondent and other defendants out of the above Honourable Court under case number 2024-045858; provided that such order will not prejudice the rights of Absa Home Loans Guarantee Company (RF) (Pty) Limited as mortgagee of the said property.

(ii) The first and second respondents are ordered to pay the costs of this application jointly and severally on scale B, the one paying the other/s to be absolved.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 12 August 2024

Date of Judgment: 27 September 2024

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 27 September 2024.

[1] Founding Affidavit para 6.

[2] Founding affidavit para 7.

[3] Ibid para 8.

[4] Applicant's replying affidavit: Annexure R8 (filed under caselines 010-54)

[5] Erasmus Superior Court Practice RS 21, 2023, D6-16D and the numerous authorities cited in footnote 165.

[6] 1948

(1) SA 1186 (W) at 1189.

[7] 2023 JDR 2134 (GJ); [2023] ZAGPJHC 704.

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