

SOUTH AFRICA / JUDGMENT

Pebe v Pebe and Others (04/2024) [2025] ZANWHC 114 (4 July 2025)

[2025] ZANWHC 114**COURT**

North West High Court, Mafikeng

BEFORE

A Reddy

CASE / FILE NUMBER

04/2024

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Policy**IN**

**THE HIGH COURT OF SOUTH AFRICA,
NORTH WEST DIVISION,
MAHIKENG**

CASE**NO: 04/2024****Reportable:**

YES / NO

Circulate

to Judges: YES / NO

Circulate

to Magistrates: YES / NO

Circulate

to Regional Magistrates: YES / NO

In the matter between:

BOITUMELO
TSHOLOFELO PROMISE PEBE
APPLICANT
and
KEOLEBOGILE
PEBE
1ST
RESPONDENT
THATOYAONE
RAMORWA
2ND
RESPONDENT
KGALALELO
PEBE
3RD
RESPONDENT
MOTHUSI
PEBE
4TH
RESPONDENT
BATHUSI
PEBE
5TH
RESPONDENT
BOTSHADINYANE
THOBEJANE
6TH
RESPONDENT
TSHEPO
THOBEJANE
7TH
RESPONDENT
KEAMOGETSWE
PEBE
8TH
RESPONDENT
TEBOGO
PEBE
9TH
RESPONDENT
DATE

OF HEARING:

23 January 2025
DATE

OF JUDGMENT: 04 July 2025
Judgment
is handed down electronically by distribution to the parties’
legal representatives by e-mail. The date that the
judgment is deemed
to be handed down is 04 July 2025
at 14h00.
ORDER
The
application is dismissed with costs.

JUDGMENT

REDDY J

Introduction

[1] On 10 January 2024, Reid J ordered the following urgent relief on an ex parte basis:

1. “An order dispensing with the form, service and time periods prescribed in terms of rule 6.12 of the uniform rules of this Honourable Court and directing that the matter be heard as urgent in terms of rules of this Honourable Court.
2. A rule nisi be issued herewith in terms of which the Respondents are called upon to show cause on the 18th day of APRIL 2024 why an order in the following terms should not be made final order of the above Honourable Court.
3. Interdicting and restraining the First to Ninth Respondents from interfering with Applicants management of Rearabile Liquor Restaurant and demanding control of its assets from the Applicant.
4. Interdicting and restraining the First to Ninth Respondents from intimidating and depriving the Applicant of access to use of Rearabile Liquor Assets.
5. The First to Ninth Respondents be ordered to return the keys and possessions of the Rearabile Liquor Restaurant in their possession as well as a Toyota Hilux with registration number J[...] with VIN number A[...] to the Applicant.
6. The first to ninth respondents be ordered to restore the financial state of Rearabile Liquor Restaurant to the state it was on 29th day of December 2023.
7. Costs be reserved for consideration on the return date.”

[2] On 18 April 2024, being the return date, the rule was extended until 23 January 2025 as the matter

became opposed.

The Parties

- [3] Boitumelo Tsholofelo Pebe (the applicant), is a daughter-in-law of Kgalebale Johnny Pebe (Kgalebale) and Keolebogile Catherine Pebe (Keolebogile). The applicant was married to Phukumusi James Pebe (James), the son of Kgalebale and Keolebogile.
- [4] The first respondent is Keolebogile Pebe. She is married to the fifth respondent Bathusi Pebe. The second respondent is Thatoyaone Ramorwa, the nephew of the sixth respondent, and son of the sixth's respondent younger sister, Gohedile Ramorwa, born Pebe. The third respondent is Kgalalelo Pebe. The fourth respondent is Mothusi Pebe. The sixth respondent is Botshadinyana Thobejane. The seventh respondent is Tshepo Thobejane, is the son of the sixth respondent. The eighth respondent Keamogetswe Pebe is the daughter of the sixth's respondent younger sister, Gobonaone Pebe. The ninth respondent is Tebogo Pebe. The third, fourth, fifth, sixth and eighth respondents are siblings to James. It follows that the applicant is the sister-in-law of the latter respondents.
- [5] The application is opposed by all the respondents.

The applicant's version

- [6] On 20 February 2019, the applicant and James entered a civil marriage. The marriage was short lived. On 18 August 2020, James passed on intestate. On 12 February 2021, the applicant was appointed as the executrix of James's estate.
- [7] During James' lifetime the applicant contends, he was the licenced owner of Rearabile Liquor Restaurant (RLR) which commenced trading as such in 2015 on land that was allocated to him. On 9 March 2021, the applicant effected a transfer of the licence of RLR from the name of James to that of her own. A tuckshop was also built on the premises which was operated by the third respondent. On 4 February 2022, a similar change of ownership occurred when the applicant transferred a Toyota Hilux, J[...] into her name. These changes, the applicant contends makes her the lawful owner of these assets.
- [8] On 29 December 2023, the applicant left to attend to some matters in Mahikeng. The first respondent was left in control of the RLR. There existed no animosity at the time of the applicant's departure with any of the respondents. Later that afternoon on the applicant's return, she discovered that the locks to the front and back entrances of the RLR had been changed. The first respondent proffered no explanation in this regard. When constrained for an explanation, the first respondent disclosed that the RLR had been taken over by the respondents and that the applicant was proscribed from entering same.

- [9] The applicant approached the Atamelang Police Station, (SAPS) to assist in mediating this dispute. To this end, a meeting was convened with the respondents, which resulted in the dispute being resolved. After this, the applicant discovered that the speed point that was used in RLR belonged to the third respondent, who operated the tuck shop. Moreover, the tuckshop had an account which was independent of the RLR. As a result, the applicant took reasonable steps to close the RLR.
- [10] The first, third, sixth, eighth and ninth respondents arrived at the RLR and resorted to self-help. Towards this end, these respondents removed money generated from sales. They locked the RLR and left with the keys, notwithstanding protestations from the applicant.
- [11] To avert a confrontation, the applicant elected to contact the members of the SAPS who were still in the area. The members of the SAPS acquiesced to convening a second meeting. The differences could not, however, be mediated due to the persistent claims of the respondents. Given this deadlock, the applicant was advised to approach the court as the appropriate forum for the consideration of this dispute.
- [12] Notwithstanding the advice previously received from the members of the SAPS on 30 December 2023, the applicant made an informed decision to approach the Station Commander of the Atamelang Police Station. The Station Commander accompanied the applicant to the RLR. However, this attempt to mediate also failed.
- [13] The applicant avers that she assented to the second respondent using the Toyota Hilux for the transportation of learners. The third respondent was compensated for this service. On 31 December 2023, the applicant requested the second respondent to return the Toyota Hilux, but he refused. The applicant contends that the second respondent is retaining same without her permission and authorisation.
- [14] On 3 January 2024, following the advice of the Station Commander Atamelang, the applicant approached the Magistrates' Court at Atamelang where she was advised to apply to Legal Aid South Africa, to assist with her cause. The applicant however managed to secure funds and on 4 January 2024 she approached this Court when the ex parte application was issued.
- [15] As indicated above, Reid J on 10 January 2024 granted the applicant interim relief.

The respondents' version

- [16] The respondents oppose the granting of final relief. At first blush, the respondents proclaim that the applicant is not clothed with the peremptory locus standi to launch this application. The respondents contend that the applicant is non-suited as she has instituted this application in her name in lieu of the executrix of James' estate. The respondents claim that the applicant is the sister-in-law to the third, fourth, fifth and eighth respondents. James, the husband of the applicant is the brother to the latter respondents. James died intestate leaving behind the applicant and five minor children. Importantly, these respondents claim Kgalebale passed away intestate on 30 October 2022, and the respective estates have not been wound up. The impact of this is crucial to this application.

- [17] There is no lis as to the applicant's role as executrix of James' estate. The respondents avow that the applicant's claim to ownership of the RLR and the Toyota Hilux is misplaced since neither the applicant nor James are the owners thereof. The respondents opine that the appointment of the applicant as executrix does not axiomatically confer ownership of the assets of the estate on heirs or legatees. The vesting of ownership of assets of an estate only occurs once the Master of the High Court has confirmed the final liquidation and distribution account in an estate, so the respondents opine.
- [18] To this end, contend the respondents, the applicant offers no evidence of the Master of the High Court confirming the approval of the final liquidation and distribution accounts. Furthermore, the applicant has not demonstrated vesting. In sum, the respondents underscore that the applicant does not have a prima facie right to the relief.
- [19] The respondents' state that the Barolong Boo Ratlou Boo Setshiro Tribal Authority (the Tribal Authority) is the titleholder of tribal lot 3[...] Zola Section Kraaipan. The Tribal Authority is enjoined with administrative power and holds the land for the benefit of the Barolong community. The Tribal authority allocated lot 3[...] to the Kgalebale as the beneficial occupier. He had from the time of allocation until his demise been in bona fide and beneficial occupation and possession of the land. Significantly, the respondents claim that the allocation by the Tribal Authority of the land to Kgalebale did not confer any real rights to him. The respondents surmise that in our law the use and enjoyment of this land was derived from a personal right enshrined in section 2 of the Interim Protection of Informal Land Rights Act, 31 of 1996 (the IPILRA).
- [20] Due to Kgalebale passing on intestate, the Tribal Authority must decide by a decision of majority of members of the community on the allocation of the land amongst the heirs. This, then is the sole prerogative of the Tribal Authority. That being so, the respondents submit that if this Court were to order final relief, it would effectively arrogate the duties and functions of the Tribal Authority which is unlawful. Given the direct, real and substantial interest of the Tribal Authority, it ought to have been joined with the respondents. In consequence, the respondents contend, the non-joinder is fatal to the application.
- [21] Tribal lot 3[...] Zola Section Kraaipan, is encumbered in favour of the Pebe family by operation of law. This is ensconced in section 2 of the IPILRA. The respondents declared that this right ousts the proprietary and financial claims of the applicant. Effectively, the respondents continue that the interim relief creates a very inequitable contract between the parties, since the court will impose a tenant on the respondents who does not pay rental, despite using "their" commercial activity.

The result would be that the respondents would be a party to a contract when their pure consent was not secured.

[22] The RLR was established in 2012 by Kgaelebale. Appositely, the documentation retrieved from the Tribal Authority, imprinted with the date stamp 7 November 2012, corroborates this. This objective evidence rebuffs the applicant's contention that the RLR commenced operating in 2015.

[23] The mutual understanding as regards the RLR was the following:

(i) Kgaelebale would capitalize the business.

(ii) It would operate from the property, thereby saving rental.

(iii) James and other siblings, including Gohedile Ramorwa (the second respondent's mother), the third, fourth, fifth and seventh respondents would run it.

(iv) Kgaelebale was already 66 years at age, it would have been more practical for James to have applied for the liquor licence in his name.

[24] Pursuant to this understanding, the respondents approached the Tribal Authority to consent to the operation of the RLR. The Tribal Authority granted consent, and James applied for the liquor licence which was in due course issued in his name. The RLR commenced trading in accordance with these mutually agreed principles. Importantly, it operated as a partnership, with the respondents involved intimately in all major decisions and Kgaelebale having the right to veto decisions. Profits were shared between Kgaelebale and the respondents. Critically, the respondents claim that the RLR falls within the estate Kgaelebale. Therefore, it is liable for distribution in equal shares

amongst the respondents as direct descendants.

[25] Against this background, the applicant erroneously transferred the liquor licence of the RLR into her name, under the misapprehension that as James' executrix she is the sole heir. The respondents contend that the true position, is that James died intestate. That being so, the applicant by virtue of her marriage being in community of community would entitle her to fifty per cent of James' estate. The remaining half the respondents assert, must be distributed between the applicant; her three children and James' other two children in equal shares. In addressing the issue of the transfer of the liquor licence with specificity, the respondents claim an interest in the liquor licence. Resultantly, the respondents state that they ought to have been approached for consent in terms of the National Liquor Act 59 of 2003, preceding the transfer of the liquor licence into her name. The absence of the consent of the respondents renders the transfer of the liquor licence into the name of the applicant null and void.

[26] In the light of the common understanding as to the running of the business it was not uncommon for financial resources to be pooled by the respondents to achieve a common goal. To this end, the GD6 Toyota Hilux and the Hilux was purchased. The latter were purchased during James' lifetime, registered in his name but were not his exclusive property. Notwithstanding the third respondent being in possession of these vehicles, the

vehicles were available for the use of any of the respondents by timeous prior arrangement, after which the vehicles would be returned to the third respondent. To ensure the vehicles were properly driven and maintained, the fourth and fifth respondents were the designated drivers of these vehicles. Funds from the common pool was also used to build James' home at 3[...]2 Zola Section, Kraaipan, which would become the applicant's home.

- [27] After the passing of James, Kgalebale proposed the inclusion of the applicant in the family business to preserve the family unity. It was agreed that the applicant should be assigned a role in the RLR together with the first and second respondents. As the applicant had not been involved in the family business, it was envisaged that the applicant would be guided by the first and second respondents in this regard.
- [28] The arrival of the Covid 19 pandemic resulted in the RLR ceasing to operate because of Government imposed restrictions on the sale of alcohol. On the relaxation of these restrictions, the RLR did not have stock, nor did the applicant have funds to replenish same. The third respondent advanced R25 000.00 to the business on the understanding that she would be reimbursed by the RLR.
- [29] Prior to the passing of Kgalebale, some fissures appeared in the applicant's relationship with the respondents. For present purposes these do not require further elucidation. In sum, the respondents claim, that the applicant has failed to make a case for final relief and that the application ought to be dismissed with costs.

Findings on points in limine

The citation of the applicant (locus standi)

- [30] At the genesis of adjudicating a litigious matter the determination of whether the party initiating the proceedings has the necessary locus standi is decisive. Insofar as the applicant is concerned, the applicant is cited in her personal capacity. This is further emblemised by a singular sentence in the applicant's founding affidavit which simply reads "I am the applicant in this matter."

- [31] In *Four Wheel Drive CC v Leshni Rattan NO* (1048/17)

- [2018] ZASCA 124 (26 September 2018) the Supreme Court of Appeal held that:

"[7] The logical starting point is locus standi – whether in the circumstances the plaintiff had an interest in the relief claimed, which entitled it to bring the action. Generally, the requirements for locus standi are these. The plaintiff must have an adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief sought; the interest must not be too remote; the interest must be actual, not abstract or academic; and it must be a current interest and not a hypothetical one. The duty to allege and prove locus standi rests on the party instituting the proceedings.

[8] The rule that only a person who has a direct interest in the relief sought can claim a remedy, is no more clearly expressed than in the judgment of Innes CJ in Dalrymple: 3 ‘The general rule of our law is that no man can sue in respect of a wrongful act, unless it constitutes a breach of a duty owed to him by the wrongdoer, or unless it causes him some damage in law.’

[32] The applicant conflates her role as the surviving spouse of James with that as the executrix of James’ estate. In *Booyesen and Others v Booyesen and Others* 2012 (2) SA 38 (GSJ), the court provided insight into the role of an executor where it held that:

“In regard to the legal status of both the deceased estate and the executor, the deceased estate is not a separate persona, but the

executor is such person for the purposes of the estate and in whom the assets and the liabilities temporarily reside in a representative

capacity. The executor only, has locus standi to sue or to be sued.”

[33] In addressing the question of locus standi in reply, the applicant contends that:

(i) “as the executor of the estate I am responsible to administer and safeguard the assets of the estate. The respondents

still do not have a right to misuse and misappropriate the assets of my late husband.

(ii) I am the executor of the estate and part of the business because I was legally married in community of property to my late husband. The remainder of the allegations contained herein are irrelevant.”

[34] Notwithstanding, the applicant conflating her role as executrix and being the late wife of James, it can hardly be argued on behalf of the respondents that the applicant does not have the requisite locus standi. The applicant’s locus standi is derived from the letters of authority issued by the Master. The legitimacy of these letters of authority is not disputed and I accordingly find that applicant had the necessary locus standi to bring the application. As far as the applicant is concerned, she clearly has an interest in the proceedings and it is only right, therefore, that the applicant cited her as a party.

[35] The point in limine on locus standi of the applicant is therefore dismissed.

Non-joinder

[36] The test for non-joinder is set out by the Supreme Court of Appeal in *Absa Bank Ltd v Naude NO* (20264/2014) [2015] ZASCA 97 (1 June 2015) in the following terms:

“[10] The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined. In Gordon v Department of Health, Kwazulu-Natal it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined.” (Footnotes omitted).

[37] In Judicial Service Commission and Another v Cape Bar Council and another 2013

(1) SA 170 (SCA) at par [12], the Court held that:

“[12] It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see eg Bowring NO v Vrededorp Properties CC 2007

(5) SA 391 (SCA) para 21). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one.”

[38] On my assessment of the application, the Tribal Authority should have been joined as it has a direct and substantial interest in the subject matter of the litigation which may prejudice the Tribal Authority. In the premises, the non-joinder of the Tribal Authority is dispositive of this application.

[39] Notwithstanding the application failing on the non-joinder of the Tribal Authority, to skirt piecemeal litigation, I shift focus to whether the interim interdict in any event had prospects of being confirmed and made final. It was held in Liberty Group Ltd and Others v Mall Space Management CC 2020

(1) SA 30 (SCA) at paragraph [22] (footnotes omitted), that:

“[22] The law in regard to the grant of a final interdict is settled. An applicant for an interdict must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other remedy. It was held by this Court in Hotz v University of Cape Town that, once the Applicant has established the three requisite elements for the grant of an interdict, the scope, if any, for refusing relief is limited and that there is no general discretion to refuse relief.”

[40] To my mind, the applicant’s primary facts, on the body of authority in our law, fail to meet the requirements for final interdictory relief.

Conclusion

[41] It follows that the application falls to be dismissed.

Costs

[42] Costs generally follow the result. There are no facts emanating from this matter that warrant a deviation from this general practice.

Order

[43] In the result:

The application is dismissed with costs

A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION MAHIKENG

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