

SOUTH AFRICA / JUDGMENT

Rapoo v Modise and Others (2019/19990) [2025] ZAGPJHC 391 (22 April 2025)

[2025] ZAGPJHC 391**COURT**

South Gauteng High Court, Johannesburg

BEFORE

A Bester

CASE / FILE NUMBER

2019/19990

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****LOCAL DIVISION, JOHANNESBURG****CASE****NO: 2019-19990****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED: YES****DATE:**

22 April 2025

In

the matter between:

CLIFFORD
RABONTSI RAPOO
Applicant
and
THABO
MODISE
First Respondent
CASSANDRA
NOMBULELO MODISE
Second Respondent
CATHARINA
MARIA CORNELIA VAN DYK
Third Respondent
NEDGROUP
TRUST
Fourth Respondent
FIRSTRAND
BANK LTD
Fifth Respondent
J
VAN ZYL BEYERS & RAUTENBACH
Sixth Respondent
THE
REGISTRAR OF DEEDS, JHB
Seventh Respondent
MASTER
OF THE HIGH COURT
Eighth Respondent

Delivered:

22 April 2025 – This judgment is handed down electronically by circulation to the parties' representatives via email, uploading it to CaseLines and releasing it to SAFLII.

ORDER

1.

The application is dismissed with costs.

2.

The applicant, in his personal capacity, shall pay the costs of the application, with the cost of counsel to be paid on Scale B.

3.

The counter-application is dismissed, with no order as to costs.

JUDGMENT

BESTER AJ:

- [1] The late Chache Victor Rapoo and his wife, the late Lettie Rapoo, in life were married in community of property and owned the property known as Erf 1[...] M[...] T[...] (the property), which is the subject matter of this application. Upon the death of the late Lettie on 2 July 2003, their son, the applicant, was appointed as the executor of her estate. Upon the death of the late Chache on 14 May 2018, the applicant was also appointed as the executor of his estate.
- [2] On 13 August 2018, the applicant, in his capacity as the executor of the two estates, entered into an agreement with the first and second respondents whereby the estates sold the property to them. On 25 April 2019, the transfer was registered under Deed T[...]. In the first week of June 2019, the applicant launched this application, seeking an order that the Registrar of Deeds be directed to cancel the deed of transfer. Only the first and second defendants oppose the application. I refer to them as the respondents unless the context requires otherwise.

Does the applicant have locus standi in iudicio?

- [3] The applicant asserted in his founding affidavit that he brings the application as executor of his late father's estate. In support of his legal standing to do so, he attached his letters of executorship dated 12 October 2018.
- [4] The respondents challenged this assertion and presented the Master's letter of appointment of NedGroup Trust as the executor of the estate on 27 May 2019. NedGroup Trust is cited as the fourth respondent.
- [5] It is well established that only the executor can institute proceedings on behalf of an estate. [1] In his replying affidavit, the applicant sought to meet this difficulty by asserting a direct and substantial interest in the property because he is a signatory to the sale contract. The applicant, however, signed the contract in his official capacity as

the executor of his late father's estate. His alternative approach is thus nothing more than a different way to assert a right to represent the estate, for which he does not have the authority.

- [6] In an apparent attempt to cure this problem, the applicant delivered a supplementary founding affidavit two and a half years later, in which he proffered his position as the executor of his mother's estate as a new basis for asserting legal standing in this application. When he instituted the proceedings, the applicant was no longer the executor of his late father's estate and thus was the applicant in his personal capacity for all intents and purposes. Not only did the applicant not seek leave to supplement his papers, but he also did not apply for substitution of parties to become the applicant in his capacity as the executor of his late mother's estate.

- [7] Co-owners of property must join in litigation when the property is the subject matter of the litigation.[2] The applicant, thus, would remain unable to pursue the relief sought in this application as the executor of his late mother's

estate. He cited Nedgroup Trust as a respondent, but this was because it was the nominated executor of his late father's will, which he claims to be disputing, and not in its capacity as the executor of that estate. In any event, the applicant didn't serve the supplementary founding affidavit, where he for the first time asserted his standing as the executor of his late mother's

estate, on Nedgroup Trust. As a result, it is not before the court in its capacity as the executor, and it has not been informed that this relief is being sought.

- [8] As a result, the applicant cannot obtain the relief sought even if a substitution were to be granted. Substitution of the applicant, insofar as the applicant's papers could be understood to ask for such relief, is not granted.

The respondents' condonation application

- [9] The respondents delivered their answering affidavits on 23 September 2019, several weeks out of time. They apply for condonation of this delay on the basis that they had not learnt of the existence of the application until September 2019, without identifying the exact date. The respondents do not offer a detailed explanation. However, I am satisfied that it is in the interest of justice[3] to allow the respondents' answering affidavits for a single reason: but for the respondents revealing that the applicant is no longer the executor of the estate of his late father, that fact would likely not have been placed before the court at all.

The counter-application

- [10] In their answering affidavit, the respondents complained that the applicant had failed to vacate the property and purported to claim occupational rental in terms of the sale agreement. The contract makes provision for payment of occupational interest should the sellers remain in occupation of the property after the transfer date (contrary to what the applicant asserts in his replying affidavit). However, the estates were the sellers. The applicant is a party to the sale agreement only in his capacity as the executor of the two deceased estates. The respondents' claim lies against the estates and not the applicant personally. The applicant is before the court in his personal capacity. For this reason, the counter-application must fail.

- [11] The respondents did not deliver a notice of motion for their counter-application but merely sought relief in their answering

affidavit. The application in total covers mere lines in the affidavits of both the respondents and the applicant. In these circumstances, no separate costs order would be appropriate with respect to the counter-application.

Costs

- [12] The papers reveal two motives on the part of the applicant to have pursued this application.
- [13] Initially, he was appointed as executor of his late father's estate on the assumption that this father died intestate. A will subsequently materialised, and the fourth respondent was appointed in terms of the will. This, in turn, caused the transferring attorney to refuse to pay the sale proceeds over to the applicant, apparently until clarity was obtained on how the proceeds should be paid out. The applicant disputes the will's validity but sets out no grounds for doing so, nor has he taken steps to obtain a declaration or other relief regarding this issue.
- [14] In addition, the applicant remains in occupation of the property and has done so cost-free since the transfer of the property.
- [15] With the above in mind, and as the applicant has not proceeded in a representative capacity in pursuing the application, he clearly should pay the costs of the application personally.[4]

Conclusion

- [16] In the result, the following order is made:
- The application is dismissed with costs.
 - The applicant, in his personal capacity, shall pay the costs of the application, with the cost of counsel to be paid on Scale B.
 - The counter-application is dismissed, with no order as to costs.

A Bester

Acting Judge of the High Court of South Africa

Gauteng Local Division, Johannesburg

Heard: 4 September 2024

Judgment

Date: 22 April 2025

Appearance for the Applicant: Mr BM Dile, instructed by Dile Attorneys.

Appearance for the First and Second

Respondents: Mr Mathunsi, instructed by Prince Katise Attorneys.

No appearance for the Third to Eighth

Respondents.

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- [1] See for instance *MM on behalf of GM v Member of the Executive Council for the Department of Health North-West Province* 2024 JDR 1617 (SCA) in para [23].
- [2] See for instance *Morgan and Another v Salisbury Municipality* 1935 AD 167.
- [3] *Ferris v FirstRand Bank Ltd* 2014 (3) SA 39 (CC) at 43 G – 4 A.
- [4] See *Conradie v Smit* 1966
- (3) SA 368 (A) at 377; *Estate Orr v The Master* 1938 AD 336 at 342; *Haylett v Haylett* 137 AD at 462.
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Prepared on 10 October 2026 · Esheria