

SOUTH AFRICA / JUDGMENT

Van Eeden v Oosthuizen and Others (2025-012995) [2025] ZAWCHC 146 (28 March 2025)

[2025] ZAWCHC 146

COURT

Western Cape High Court, Cape Town

BEFORE

Nuku

CASE / FILE NUMBER

2025-012995

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IN

THE HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE DIVISION, CAPE TOWN)

Case

No:2025-012995

In

the matter between:

RUANSA
VAN EEDEN
Applicant
and
ALETHA CATHERINA
OOSTHUIZEN
First
Respondent
SANLAM PRIVATE WEALTH
(PTY) LTD
Second
Respondent
MASTER OF THE HIGH

COURT, WESTERN CAPE
Third Respondent

Coram: NUKU J
Heard on: 20 February 2025
Delivered on: 28 March 2025

JUDGMENT

NUKU, J

Introduction

[1] The applicant was involved in a romantic relationship with the late Wilfred Heathcoate Craythorne (the deceased) who passed away during November 2024. At the time of the death of the deceased, the applicant resided with her two children at a rented apartment situated at(the Tokai apartment). The deceased resided in his property situated at

(the property) and the applicant had a set of keys to the property (the property keys).

[2] When the applicant learnt about the death of the deceased, she took the set of the property keys that had been in the possession of the deceased into her possession. Thereafter, she gave one set of property keys to the brother of the deceased, Ryan Craythorne (Ryan). This was so that the family of the deceased could occupy the property when coming to attend the funeral. As more of the family members of the deceased came, one set of keys became unmanageable and Ryan requested the second set of the property keys from the applicant, which she provided on 2 December 2024.

[3] At some point in time when the applicant enquired about the return of the property keys from Ryan, the latter advised that the property keys would, on the advice of the second respondent, be safely stored until the appointment of an executor to the estate of the deceased.

[4] Considering the failure to return the property keys an act of spoliation, the applicant brought this urgent spoliation application seeking the return of the property keys so as to restore “her unfettered access to and occupation of the property”. The applicant further seeks wide-ranging relief including:

4.1 a declaratory order that she is entitled to continue to occupy the property with her children;

4.2 interdict against the first and second respondents directing them:

4.2.1 not to interfere with her occupation of the property;

4.2.2 not to enter the property;

4.2.3 to provide her with the passcodes and passwords of the security system

that has been installed at the property;

4.2.4 to provide her with a copy of the divorce order recording the dissolution of the marriage between the deceased and Malinda Botha;

4.2.5 to return the vehicles belonging to the deceased as well as some items listed in annexure X to the founding affidavit;

4.2.6 to disclose to her and the third respondent, the whereabouts of the property of the deceased that has been removed from the property, and which is not listed in annexure X to the founding affidavit; and

4.3 An order directing the third respondent to:

4.3.1 facilitate the reporting of the deceased's estate by her; and

4.3.2 appoint an executor within 10 (ten) days of the granting of the order, which executor shall not be the first respondent, second respondent or any of the siblings of the deceased.

[5] The application is opposed by the first respondent who disputed urgency, raised a point in limine of misjoinder and denied that the

applicant had made out a case in respect of any of the relief she seeks.

[6] Whilst there is merit to the urgency and misjoinder points raised by the first respondent, I have elected to determine the application

on the merits. This has been partly informed by the fact that the determination of this application on urgency and misjoinder points

would, as shall become clear later, delay the inevitable. Sometimes the interests of justice demand speedy resolution of disputes rather than prolonging the agony that goes along with litigation. Before considering the merits of the application, it is necessary to set out the factual background.

Factual

Background

[7] This matter has its genesis on the passing away of the deceased on 18 November 2024. The surviving family of the deceased includes his mother, the first respondent, his siblings Ryan, Mr Sean Craythorne (Sean), Mrs Charmaine Taverner (Charmaine) and his nephew Mr Warren Craythorne (Warren), none of whom reside in South Africa except the first respondent.

- [8] In the process leading up to the funeral service of the deceased, the applicant advised Sean and Warren that they could stay at the property. In this regard, a WhatsApp message she sent to Sean, on 20 November 2024, reads “Dear Sean, I’m so delighted that you and Michael are coming. You are welcome to stay at Wilfred’s house for the duration of your stay. I have said the same to Warren when he told me that he is coming. Love Ruansa.”
- [9] On 21 November 2024, the applicant had a long telephonic conversation with Warren regarding the funeral arrangements when the latter offered the former a loan of about R200 000.00 to tie her over the immediate period. The applicant declined the loan offer advising that she had withdrawn some money from the bank account of the deceased.
- [10] Charmaine became aware of the fact that the applicant had withdrawn some money from the bank account of the deceased and on 22 November 2024, she voiced her disquiet about the fact that the applicant had withdrawn monies from the bank account of the deceased. On the same day, Ryan advised the applicant that he would be arriving in Cape Town on 27 November 2024. Ryan offered to assist with funeral arrangements, an offer which he repeated the following day, 23 November 2024.
- [11] On 27 November 2024, the applicant handed the deceased’s computer over to Sean and she requested Sean to sign an acknowledgement of receipt which he did.
- [12] On 1 December 2024, Ryan sent the applicant a message advising her that two more family members (Frank and Michel) were due to arrive in South Africa and that he required the set of keys, the remote control and the deceased’s cellphone. This message which was in Afrikaans reads “Hi Ruansa, Frank en Michael kom Dinsdag en ek wil asb die stel sleutels en remote wat jy het more by jou kom haal. Ook ek het Wali se foon nodig vir bank access. Sal jy my laat weet hoe laat ek die goed kan kom haal by jou en stuur asb vir my jou adres. Baie dankie lekker aan.”
- [13] The applicant responded to Ryan on the same day advising him that he could come to her house the following day before 13h00. Her message which was also in Afrikaans reads “Hi Ryan, jy is welkom om more 13h00 na my huis toe kom en ek sal eers met jou wil gesels om te verstaan. Ek vra mooi daat Wilfred se nagedagtenis asb bewaar word in al ons interaksie ... my adres is [...] R[...], 2[...] V[...] R[...] Tokai.”
- [14] On 2 December 2024, the applicant sent Ryan a message requesting him to bring some items from the property and enquired whether Ryan

would be coming alone. Her message to Ryan reads “Hi Ryan, sal jy asb ook my briefies en kaartjies aan Wilfred oor die jare saambring en dit goue ring wat ek vir hom gekoop het? Die briefies en kaartjies het hy in sy laaie gebere (bedkassie en klerekas) en die ring was laas in sy kas waar sy parfume staan. Dit het sentimentele waarde vir my. Dankie ek sien jou 13h00. Kom jy alleen?” Ryan responded advising that he would be accompanied by Warren.

[15] The applicant met with Ryan and Warren on 2 December 2024 at her home that is the Tokai apartment. At this meeting, she handed over a sum of R16 983 to Ryan. It was also at this meeting that the applicant handed over the second set of the property keys to Ryan. After this meeting, the applicant sent Ryan's wife a message, the English translated version of which reads "Your husband is amazing ... after talking to Ryan today it's going to get better. As if it was Wilfred sitting in front of me saying don't worry, I've got this."

[16] On 9 December 2024, Ryan approached the second respondent for assistance with the administration of the estate of the deceased. The

second respondent formally accepted this engagement on 12 December 2024 on the basis that it was to facilitate the reporting of the estate, the filing of the necessary documents with the Master of the High Court, providing guidance on the procedural requirements and ensuring compliance with the Administration of Estates Act, 66 of 1965.

[17] On 10 December 2024, Sean sent the applicant the following message: "Hi Ruansa, can you please give us a list of the things you said were yours or gifts from Wally. Charmaine and I are beginning to clear things out and I have found a homeless charity that we want to donate things to. The house will possibly be rented while the executors are working on sorting out the estate, therefore, the need to expedite the process. Do you know who the stuffed toy bunny upstairs belongs to? Also do you have a black coat here? Can you please let us know before Friday. Thank you."

[18] The applicant responded to the above request in an email to Ryan dated 12 December 2024 advising that she is able to provide a basic list of some items and that it is not possible to itemize everything at that point. The applicant went further to voice her unhappiness about the fact that she had handed over the deceased's cellphone, laptop and her set of the property keys "as all assets should be dealt with by an executor" but that she was also "aware of the practicalities of having to sort so much in the transition period before an executor is appointed" and that this is the reason why she co-operated with the requests to handover the belongings of the deceased. The email concluded by saying:

'I am available to provide support and assistance to your mom when you have all returned home and, when I return to Cape Town, I will be in a position to arrange the removal of my possessions and will, of course, be available to provide any assistance you need regarding the house. As his life partner and the only related person, other than your mom, who lives in the immediate area, I am best positioned to take care of the house (and his cat) until the executor decides what needs to happen to it next. Please ensure that my housekeys are returned to me before your party leaves South Africa at the end of December 2024.'

[19] On 13 December 2024, Ryan responded to the applicant's email and copied the representative of the second respondent, Ms Gillian Venter (Ms Venter) advising that (a) he had appointed the second respondent to ensure fairness and compliance with South African laws, (b) Ms Venter would act as a primary point of contact and that because of her experience, she would be able to address all of the applicant's concerns in a professional

and empathetic manner, (c) the planned cleaning of the property on 13 December 2024 was to preserve the estate's integrity and prevent deterioration or loss, and (d) Ms Venter had advised that all keys are to be safely stored together until such time as the executor has been formally appointed, whereafter the property and movable assets can then be dealt with as part of the estate administration process. He provided the applicant with Ms Venter's contact details and ended the email with the words "Thank you for your understanding and cooperation during this challenging time. Please do not hesitate to reach out to Gillian if you have any further concerns."

- [20] On 16 December 2024, the applicant called Ryan and among other things informed Ryan about a discussion she had had with the deceased, between September and November 2024, about her moving back to the property since her lease was expiring in January 2025 as well as using some of the available space where the deceased conducted his medical practice. She advised Ryan that, in line with that discussion, she would have given notice to her landlady on 1 December 2024 with the intention of moving out in January to stay with the deceased, something which was disrupted by the death of the deceased. The applicant recorded this conversation which they held in Afrikaans. An English translation of this message dealing with the property has the applicant stating:

'So I don't know what your plans are with the house, all that I can think is that you must have a problem with the house, it must be a huge headache because, I can't think that you can just rent out the house at this stage, and I can't think who would be better to look after the house, because I stayed there for years, I helped Wilfred in the house to fix things.... I care about the house because it is Wilfred's place, it is a place with good memories for us, many special memories as a family, so I don't know, I think I am a solution for your problem, if it is a problem for you, that you don't know what to do with the house. You won't find someone better to look after the place than me given the fact that we went so far to talk about you know, in January moving in together, yes, it is like, I know it is your decision ...'

- [21] On 20 December 2024, Sean advised the applicant that he would be leaving the following Sunday whereafter the property would be locked. Sean further advised the applicant to send someone to collect boxes that he had packed for her. According to the applicant, at this stage, she had been advised to seek legal advice and had then been made aware, for the first time, of the full extent of her claims that she has in terms of the Interstate Succession Act and the Maintenance of the Surviving Spouses Act. The applicant responded to Sean by advising him that she had appointed attorneys and that all further correspondence regarding her possessions should be directed to them.

- [22] On the same day, the applicant's attorneys emailed the second respondent demanding (a) the return of the property keys by no

later than 23 December 2024, and (b) undertakings to be provided by no later than 12h00 on 23 December 2024 that all items

belonging to the applicant or the deceased that had been removed from the property would be returned, and that there will be no further interference with either the applicant's or the deceased's possessions and that nothing will be removed from the property. The letter also requested the second respondent to advise the applicant's attorneys "when letters of executorship have been issued so that our client can address the executor/s regarding her claims."

- [23] The bottom of the email referred to above advised that the offices of the applicant's attorneys would be closing on 23 December 2024 until Friday, 3 January 2025 and that writer of the email would be returning to the office on 13 January
2025. Ryan was copied in this email and he responded on 23 December 2024 advising that (a) that the second respondent had been appointed as the Craythorne family representatives in this matter and that the second respondent will be responding upon her return in the new year, (b) the email address used for Ms Venter was incorrect and he provided the applicant's attorneys with the correct email address, and (c) that the second respondent's offices were closed until 13 January 2025. Ryan also forwarded the email from the applicant's attorneys to Ms Venter.
- [24] On 24 December 2024, the applicant's attorneys sent two emails to the second respondent. The second email which was a follow up on an earlier email requested an urgent response because of the claim that the applicant, as the life partner of the deceased, has obligations in terms the Administration of Estates Act which were being hindered by the withholding of the property keys. The email further requested a copy of the divorce order recording the dissolution of the deceased's marriage to Malinda Botha in England, United Kingdom.
- [25] On 27 December 2024, the second respondent's representative, Linky Sodi (Ms Sodi) responded to the applicant's attorneys advising, regarding the refusal to return the property keys, that the property is owned by the deceased and that the deceased's mother, being the nearest blood relative, would be the beneficiary of the estate under the Interstate Succession Act. Ms Sodi further advised that the estate had not been reported to the Master of the High Court.
- [26] The applicant's attorneys responded to Ms Sodi on the same day advising, among other things, that the withholding of the keys is unlawful and that they would be proceeding to formally secure the return of same. The email further advised that the applicant's intention was to object to the appointment of the second respondent as the executor of the estate of the deceased. The intended objection would be based on the applicant's view that the second respondent has a conflict of interest. The email concluded by stating that "As the life partner of Dr Craythorne, it is our client who is the intestate heir to Dr Craythorne's estate. It was accordingly correct that she retained his personal belongings. It was misrepresented to her that the executor required the possessions because, as you correctly point out, no executor has been appointed."

- [27] Ms Sodi responded to the above letter on the same day advising, inter alia, that the second respondent “will not be applying to be appointed as executors of the estate...” She also dismissed the applicant’s claim that the second respondent was conflicted as unfounded. She also advised that the applicant was welcome to lodge an objection or her claim for maintenance against the estate with the Master of the High Court.
- [28] On 30 December 2024, the applicant’s attorneys addressed a further email to the second respondent raising their concerns that the latter had not responded to the issues raised by the former in the email of 27 December 2024. The email also referred to the removal of some of items from the property and that “without our client having keys to the property, it is impossible for her to ascertain the extent of the items that have been removed.”
- [29] On 31 December 2024, the applicant addressed an email to Charmaine, Sean and Ryan with the heading “What would Wilfred have done?” In this email, she expressed her sense of disgust at how she had been treated by the Craythorne family stating that:
- “Each one of you has defiled Wilfred’s house – a house I’ve personally helped him to fix, clean and organise over the years. I personally prepared and opened the door to you for the duration of your stay in Cape Town. You deceived me with your hypocrisy and short-lived and / or false care and concern for me and my children. You misled me about your intentions for coming to Cape Town, knowing that none of you, apart from Warren and Janene, had spent any meaningful time with Wilfred in the past nine years.... Yet you felt entitled to enter his home, remove and distribute his belongings and decide over his affairs, as though you were close to him.”*
- [30] The second respondent reported the estate of the deceased to the Master of the High Court on 13 January 2025.
- [31] On 16 January 2025, the applicant’s attorneys addressed a letter to second respondent stating that “We have consistently reiterated how urgent it is that my client be afforded access to the Constantia property and that her keys be returned to her. She has been unlawfully deprived of her rights of possession in respect of the property.” The email continued “our proposal was that my client would be afforded access to the property ‘sometime next week’, supervised by you when you could accommodate her, to collect her belongings, but that you have a busy schedule ... Unfortunately, it is not appropriate for our client to have to wait for you to be available to accommodate her access to the property ... You have advised that Mrs Craythorne has a driver and people to assist her. We have invited you to arrange for Mrs Craythorne to meet our client at the Constantia property tomorrow, to allow our client access and for her to try and collect Bella.... This proposal does not detract from our client’s rights to secure her keys, the documents she requires and that the movables she requires to be returned as a matter of urgency... you have advised that your office has now reported the estate. We have advised that our client too will report the estate. We are concerned that your delay in responding to us is an attempt to have the letters of executorship granted to your client, despite us having advised of our client’s objection thereto. ... kindly advise us of the reference number for the estate as a matter of urgency.”

- [32] Ms Venter responded to the correspondence referred to above on 17 January 2025 advising that (a) the applicant's attorney had not provided her with any evidence in support of the applicant's claim that she and the deceased were life partners that had undertaken reciprocal duties of support, (b) as the applicant's claim to life partnership remains unsubstantiated, she has no right to access the property nor to be handed the property keys, (c) that the first respondent, as the most likely beneficiary of the estate of the deceased, has the right to possess the keys to take control of the assets before an executor is appointed.
- [33] On 20 January 2025, the applicant deposed to an affidavit substantiating her life partnership claim. The affidavit was submitted to the Master of the High Court with the documents reporting the estate of the deceased nominating the applicant as an executrix.
- [34] On 22 January 2025, the applicant's attorneys addressed a letter to the second respondent attaching the affidavit substantiating the applicant's claim to life partnership and advising that they had been instructed by the applicant to secure her access to the property so that her occupation of the property could be restored. The letter referenced an agreement that the applicant had with the deceased that she could move into the property with her daughter and that acting in line with that agreement, she had terminated her lease.
- [35] On the same day, Ryan, Sean and Charmaine responded to the applicant's email of 31 December 2024 advising, inter alia, why the second respondent had been appointed to assist, explaining reasons for securing the property and advising that they would prefer than "an amicable agreement be reached regarding your claims against the estate to avoid lengthy and costly litigation expenses for the estate and yourself."
- [36] On 24 January 2025, the second respondent advised the applicant's attorneys that their letter had been referred to the Craythorne family's legal representatives. The application was launched on 30 January 2025. Against the above background, I turn to consider each of the applicant's claims.

The Spoliation remedy

- [37] There is something unusual about the applicant's claim for the spoliation remedy in that she does not seek restoration of her

"peaceful and undisturbed possession of the property" but seeks the return of the property keys "so as to restore her unfettered access to and occupation of the property." That being the relief that the applicant seeks, this court must determine (a) the availability of the spoliation relief in respect of a claim for the restoration of access to property, and (b) whether the applicant was in occupation of the property.

- [38] Regarding the availability of the spoliation relief in respect of a claim for the restoration of access to property, it was submitted on behalf of the first respondent that a mandament van spolie does not protect access. This court was referred to *De Beer v Zimbali Estate Management Association (Pty) Ltd*[1] (*De Beer*) where it was stated that “A summary of the above cases would seem to me to indicate that the mandament van spolie is there to protect possession, not access.”
- [39] The applicant’s claim to restoration of access to the property under the guise of spoliation remedy is bad in law and the applicant could point to no authority in support of a proposition that spoliation remedy is now available to protect access. This difficulty resulted in the applicant changing her case somehow to suggest that her case was that by having the property keys, she had physical control of the property with the intention of deriving some benefit therefrom, and that on the authority of *Vital Sales Cape Town (Pty) Ltd v Vital Engineering (Pty) Ltd and Others*[2] (*Vital Sales*), the spoliation remedy is available to her. By the benefit to be derived, I assume the applicant refers to the occupation of the property and this ties in with the claim for the restoration of her occupation of the property.
- [40] The applicant’s change of course is, however, unavailing because it is clear from the exchange of correspondence that has been catalogued above that the applicant had not been in occupation of the property at the time that the deceased passed away as well as at the time when she gave the property keys to Ryan. When she was told that the property was being cleared and requested to provide a list of her items which were at the property at the time, she complied without a demur. She even suggested, on more than one occasion, to Ryan that she is the person who would be best placed to look after the property until the executor decides what is to happen to the property.
- [41] Her claim to have occupied the property is further undermined by her evidence relating to the discussion she had had with the deceased referred to above about the possibility of moving in with the deceased during January 2025. This, if anything, is proof that she had not been in occupation of the property even though she had the property keys. In as much as she had the keys, she was not, at the relevant time, in possession or occupation of the property. In my view, the applicant’s claim for a spoliation remedy is contrived and not sustainable on the evidence presented.

The declaratory and interdictory remedies

- [42] Much of the applicant’s attention was dedicated to establishing that the deceased was her life partner with the view of establishing possession of the property that nothing was said to substantiate the applicant’s entitlement to the declaratory as well as the interdictory remedies. These claims appear to flow from the applicant’s claim that the deceased was her life partner.

The applicant, however, accepts that the issue of the life partnership between her and the deceased is not one that this court

is required to decide in these proceedings.

[43] Without deciding an issue that would clothe the applicant with the necessary standing to claim these remedies, it is difficult to

understand how the applicant can establish the necessary requirements. Despite the applicant's founding affidavit spanning about 49 pages without annexures, not a single word, for example, is said about the applicant's prima facie right that will be harmed if the interdictory remedy is not granted.

[44] The heads of argument filed on behalf of the applicant merely repeat the requirements for an interdict and suggest that the first respondent has failed to deal with the applicant's claim for the interdictory relief without pointing to any averments made by the applicant that can establish her entitlement to the interdictory relief. The situation is worse when it comes to the declaratory relief as not even a single word is said to substantiate the applicant's entitlement thereto. In my view, the applicant's claim for the declaratory and interdictory remedies did not even get out of the starting blocks and must accordingly fail.

Conclusion

and costs

[45] Spoliation remedy is not designed to protect access. The applicant presented no evidence that she had been in occupation of the property when she gave the property keys to Ryan. There is thus no occupation of the property to be restored because of the fact that the applicant was not in occupation in the first place. That must put an end to any claim for spoliation on the basis of the applicant's failure to establish peaceful and undisturbed possession.

[46] The applicant failed to plead facts in support of her claims for the declaratory and interdictory remedies with the result that the

application fail.

[47] The first respondent has been successful, and, in my view, she is entitled to costs. The applicant brought the application as an urgent application giving the respondents not much time to respond. The applicant must have known that the first respondent, who appears to be her main adversary, had no knowledge of most of the allegations that she (the applicant) was making in her affidavit as she had had almost no dealings at all with the first respondent. She must have known that the first respondent's opposition would invariably require consultation by the first respondent's legal team with the family of the deceased that lives outside the country. That the first respondent was able to present her opposition within the truncated timeframes that she was given could only have been made possible by the involvement of more than one counsel to prepare her opposition. That being the case, the first respondent is entitled to the costs occasioned by the employment of more than one counsel.

Order

[48] In the result, I make the following order:

The application is dismissed, and the applicant is to pay first respondent's costs to be taxed on scale B and which costs include costs occasioned by the employment of two counsel, where so employed.

L.G. Nuku

Judge of the High Court

APPEARANCES

For applicant: L Buikman SC Instructed by: Catto Neethling Wiid Inc, Cape Town For first respondent: J Bernstein and P Gabriel Instructed by: Norman Wink Stephens, Cape Town For second and third respondents: No appearance

[1] De Beer v Zimbali Estate Management Association (Pty) Ltd 2007 (3) SA 254 (N) at para 54

[2] Vital Sales Cape Town (Pty) Ltd v Vital Engineering (Pty) Ltd and Others 2021 (6) SA 309 (WCC)

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