REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED:

Date: ***14th October 2021*** Signature:

CASE NO: 48085/2021

DATE: 14TH OCTOBER 2021

In the matter between:

MASWANGANYI, SIBONGILE	First Applicant
MASWANGANYI, PASEKA RONALD	Second Applicant
MASWANGANYI, PATRICK THEMBA	Third Applicant
MASWANGANYI, LUCKY	Fourth Applicant

and

MANZINI, SIBEKENI WILLIAM	First Respondent
MANZINI, BOGADI UNA	Second Respondent
THE SHERIFF OF THE COURT, ROODEPOORT	Third Respondent

Coram: Adams J

Heard: 14 October 2021 - The 'virtual hearing' of the application was conducted as a videoconference on *Microsoft Teams*.

Delivered: 14 October 2021 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being

uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 17:00 on 14 October 2021.

Summary: Unopposed urgent application – interim interdictory relief – transfer of property into name of respondents challenged some five years after the fact – applicants need to demonstrate that they have a *prima facie* right, open to some doubt – that is a factual question – on the facts the applicants have failed to demonstrate compliance with this requirement – urgent application refused –

ORDER

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(1) The applicants' urgent application against the first and second respondents is dismissed.

(2) There shall be no order as to costs.

JUDGMENT

Adams J:

[1]. This is an unopposed urgent application by the applicants for interim interdictory relief against the first, second and third respondents. The first and second respondents are the registered owners of immovable property, being Erf 12293 Dobsonville Extension 5 Township, Gauteng, situate at 12293 Mshenge Street, Dobsonville Extension 5, Gauteng ('the property'). The applicants reportedly acquired ownership of the property by purchasing same at a sale in execution early in 2021, after the bondholder had foreclosed on the property and caused same to be sold at a public auction. The property was until a day ago occupied by the third and fourth respondents who were evicted from the property by the Sheriff of the Court pursuant to a warrant for their eviction issued by the Roodepoort Magistrates Court.

[2]. This extremely urgent application is in essence for an interim order staying the execution of the said eviction order, pending finalisation of litigation in which the applicants challenge the validity of the transfer of the property into the name of the first and second respondents. This dispute has its origin in the transfer of the property from the estate of the deceased, Mr Philemon Maswanganyi, to a Mr Khalo during or about 2016. Mr Khalo was the owner of the property, when his bankers, the bondholder, FirstRand Bank Limited, foreclosed on the property, which in turn resulted in the disposal of same to the first and second respondents.

[3]. All of the applicants, who are the biological children of the deceased, contend that the transfer of the property to Mr Khalo during or about 2016 was unlawful and should be avoided. The disposal of the property was apparently at the instance of a Mrs Margaret Dipuo Maswanganyi, the duly appointed holder of Letters of Authority in respect of the deceased estate. She was the wife of the deceased as and at the date of his death. The applicants are hoping to in due course 'unscramble the egg' that is the transactions that happened since 2016 relative to the property and they intend doing that in an application issued out of this court recently. In the interim and pending finalisation of that application, they, more particularly the third and fourth respondents, apply in this application for an order interdicting the first and second respondents from acting on the eviction order, which was lawfully issued by the Roodepoort Magistrates Court on the 11th of August 2021.

[4]. There is not much evidence placed before me as regards the foreshadowed application. The allegation by the applicants is that the 'executrix' failed to act in the best interest of the deceased estate.

[5]. The applicants, who seek interim interdictory relief, need to demonstrate that they meet the requirements for such relief, notably that they have a *prima facie* right, subject possibly to some doubt, which requires protection. As was confirmed by the Constitutional Court in *City of Tshwane Metropolitan Municipality v Afriforum and Another* [2016] ZACC 19, the requirements for an

interdict are well established in our law. At para 49 the Court set out the principles as follows:

‘[49] To determine whether this is perhaps one of those cases where "a proper and strong case" or “the clearest of cases" has been made out for the interim relief, it is necessary to examine how Afriforum met the requirements for the grant of an interim interdict. Those requirements were of course set out in *Setlogelo and Webster* as: (i) a prima facie right that might be open to doubt; (ii) a reasonable apprehension of irreparable and imminent harm to the right if the interdict is not granted; (iii) the balance of convenience favourable to the grant of the interdict; and (iv) the absence of any other adequate remedy.’

[6]. Now, whether the applicants meet these requirements is a factual one and the question is this: Have the applicants demonstrated that they have the right to have declared invalid the registration of the property into the names of the applicants? It bears emphasising that that right needs only be a *prima facie* one – open to some doubt. The applicants allege that they have such a right. I am not convinced. My view is that, all things considered, notably the fact that the property is now two transfers removed from the deceased estate and the applicable legal principles relating to certainty of property registration, the applicants’ supposed right is non-existent. This is a factual enquiry, to be decided on the basis of the facts in the matter.

[7]. An important fact in this matter is that the claim by the applicants that the property should never have been transferred into the names of the respondents dates back to 2016. The applicants’ case is barely tenable.

[8]. Therefore, howsoever one views the facts in this matter, it cannot, in my view, be said that the applicants have a right – not even one open to some doubt – on which to found an interim interdict. With the evidence before me, it can confidently be said that the applicants have no right to challenge the applicants’ ownership of the property.

[9]. They therefore fall short as regards the requirement of a *prima facie* right if an interim interdict is sought, which means that the application of the first, second, third and fourth applicants against the respondents stands to be dismissed.

Costs

[10]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so.

[11]. This application was not opposed by the respondents and the appropriate costs order would be one of no order as to costs.

Order

Accordingly, I make the following order: -

(1) The applicants' urgent application against the first and second respondents is dismissed.

(2) There shall be no order as to costs.

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L R ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	14th October 2021 – in a 'virtual hearing' during a videoconference on *Microsoft Teams*
JUDGMENT DATE:	14th October 2021 – judgment handed down electronically
FOR THE APPLICANTS:	Attorney S J Msiza
INSTRUCTED BY:	Msiza & Associates, Johannesburg
FOR THE FIRST, SECOND AND THIRD RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance