

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 24583/09

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 7 December 2022 E van der
Schvff

In the matter between:

LOVELL, KEVIN STANHOPE APPLICANT

and

LOVELL, ANGELA RESPONDENT

In re:

LOVELL, ANGELA APPLICANT

and

LOVELL, KEVIN STANHOPE FIRST RESPONDENT

FAIRBRIDGES WERTHEIM BECKER
ATTORNEYS INCORPORATED SECOND RESPONDENT

APPLICATION FOR LEAVE TO APPEAL: JUDGMENT

Van der Schyff J

Introduction

- [1] Mr. Lovell, the first respondent in the anti-dissipation application launched by Ms. Lovell, and the applicant in this application, applies for leave to appeal against paragraphs 35 to 50 of the judgment, and paragraphs 5 and 6 of the order handed down by me on 22 September 2022.
- [2] Paragraphs 5 and 6 of the order embody the anti-dissipation order. I handed down a written judgment and set out the reasons for my ruling. I do not intend to revisit same.
- [3] The anti-dissipation order is, in its very essence, an interim order. The order does not have any final or definitive effect on the main action, and neither does it dispose of any issue between the parties. The question then arises as to whether the order, although of an interim nature, has an immediate and substantial effect, including whether the harm that flows from the order is serious, immediate and ongoing – as explained by the Constitutional Court in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*.¹ The effect of the order, in principle, would not have caused Mr. Lovell to suffer any serious, immediate and irreparable harm. In *Tshwane City v Afriforum and Another*,² the Constitutional Court held that leave to appeal interim orders must be granted if it is in the interest of justice.
- [4] Counsel for the applicant submitted that it is in the interest of justice to grant leave to appeal because I wrongly applied the legal test for anti-dissipatory relief. I

¹ 2012 (6) SA 223 (CC).

² 2016 (6) SA 279 (CC).

disagree with the contention that the test was applied wrongly, and again refer to the reasoning underpinning the order as set out in the written judgment. In my opinion, there is no reasonable prospect that Mr. Lovell would succeed on appeal.

[5] Mr. Lovell's counsel submitted that it would be in the interest of justice for the issue of how anti-dissipatory relief should be considered where accrual claims underpin the litigation between parties, for the Supreme Court of Appeal to finally decide the issue. In the absence of conflicting judgments, this submission does not hold water.

[6] Mr. Lovell contends that it is impossible to adhere to the order granted on 22 September 2022 because the asset under consideration was already sold, and the money was paid out to him, and used by him to pay off some debts, before the anti-dissipation application was argued. I fail to see, how a respondent's failure to make a frank and honest disclosure to the court when a matter is argued by informing the court that the relief sought by the applicant is moot because the asset sought to be protected has already been alienated, can favourably inform any application for leave to appeal. In fact, the non-disclosure by both the respondents in the anti-dissipation application is to be frowned upon. Mr. Lovell's attorney of record knew well that his firm has already paid out the proceeds of the sale of the house to Mr. Lovell before the application was heard, and he failed to bring that fact to the court's attention. It goes even further. Mr. Lovell's attorneys of record were cited as the second respondent in the anti-dissipation application. They were fully aware of the relief sought by Ms. Lovell – and despite this, they did not reveal that the proceeds of the sale of the immovable property were already paid to Mr. Lovell. In these circumstances, I agree with the submission that Mr. Lovell does not stand with clean hands before this court.

ORDER

In the result, the following order is granted:

- 1. The application for leave to appeal is dismissed with costs.**

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant:	Adv. A Bester SC
With:	Adv. R Bosman
Instructed by:	FAIRBRIDGES WERTHEIM BECKER
For the respondent:	Adv. G Kyriazis
Instructed by:	SHABAN CLARK COETZEE ATTORNEYS
Date of the hearing:	17 November 2022
Date of judgment:	7 December 2022