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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case No: 2022/045691

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| (1) REPORTABLE: NO<br>(2) OF INTEREST TO OTHERS JUDGES: NO<br>(3) REVISED: NO |
|---|

3 NOVEMBER 2023

DATE

SIGNATURE

In the matter between:

**PIONEER VULINDLELA MATAI**

Applicant

and

**NGENO AND MTETO INCORPORATED**

First Respondent

**TANDO NGENO**

Second Respondent

**SINOVUYO NTIYA**

**NTIYA [FORMERLY MATAI]**

Third Respondent

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Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 03 November 2023

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## JUDGMENT

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### **BOTSI-THULARE AJ:**

#### ***Introduction:***

#### Main application

[1] This application is brought by Pioneer Vulindlela Matai (the applicant), a major male in his capacity, formerly married to Sinovuyo Ntiyantiya (third respondent). The applicant brings this application for a final interdict against Ngeno and Mteto Incorporated (first respondent), a personal liability company duly registered and incorporated in terms the company laws of South Africa, and Tango Ngeno (second respondent), an adult male legal practitioner who was admitted and enrolled as such in terms of section 24 and 30 of the Legal Practice Act.

[2] The first and second respondent to be interdicted from unlawfully withholding of the applicant 'share of the proceeds on the sale of the property situated at 673 Milano Street, Copperleaf Golf estate, Mnandi (the property). and the share of the proceeds to be paid to the applicant. Further that the first and second respondent be interdicted from subtracting certain amounts from the proceeds.

#### Counter Application

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[3] The third respondent made a counter application to the Honourable Court to be heard simultaneously with the main application, for an order that the addendum entered into between the applicant and the third respondent on 1 February 2022, in respect of the settlement agreement entered into between the parties on 14 December 2020 and made an order on 21 January 2021 under case no GP/RC1217/2020 be made an order of court. The proceeds of the sale of the property be paid in full to the third respondent, the ownership of motor vehicle VW Polo be registered to the applicant, and the applicant to take necessary steps required to sign documents necessary to give effect to the order of the court and to pass transfer of the motor vehicle.

[4] Alternatively in the event where the court does not make the addendum an agreement of court and only in the event where the court finds that the applicant is entitled to 50% of the proceeds, to direct the first respondent to subtract from the proceeds of the sale of property the arrears due in respect of the property and the motor vehicle.

#### Condonation

[5] The third respondent also applied for condonation for the late filing on the grounds that she was abroad at the time and could not timeously depose to an affidavit, this shows good cause, and the third respondent is not wilful, and the applicant was not prejudiced by late filing.

#### ***Background Facts***

[6] The applicant and the third respondent were married in community of property and their marriage was dissolved on 22 January 2021 by divorce and was subjected to a final settlement agreement. The applicant and the third respondent are the registered owners of two immovable properties known as Erf 673 Peach Tree Ext 1 and SS 104, Unit 21 Burgundy.

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[7] The applicant engaged the third respondent on his intention to resign from his employment and suggested that they sell the two immovable properties in order to ease financial commitments on the applicant as he was the sole contributor on both the bond repayments. The applicant and the third respondent reached an agreement and arranged for the properties to be listed and marketed by various estate agents including LWP Estate Agents (the agents).

[8] On 3 June 2022, the applicant received an offer to purchase (OTP) on the property from the agents which he signed and sent to the third respondent for counter signature. On 7 June 2022, the applicant received a copy of a duly signed OTP from the agents and recommended a certain conveyancer. The recommendation was objected by the third respondent stating that she has given the recommendation to someone else who is going to give her a discount when she buys the house. The applicant responded that he needs an update on the progress of the sale and further not being involved in the conveyancer discussions about the property is illegal and unallowed. The applicant's response was not replied to by the respondent.

[9] Further emails were exchanged and on 7 June 2022, the agents corresponded via an email requesting documents to effect transfer after securing a buyer, which the applicant obliged. On June 2022 and 15 July 2022, the applicant directed an email to LWP Estate Agents enquiring about the transfer progress in which the agents were not aware that the conveyancer had not engaged with the applicant on the progress regarding the transfer of the property. The agents undertook to instruct the conveyancer again to include the applicant in the correspondence.

[10] On 19 July 2022, after the agents instructed the conveyancer to supply the applicant with weekly updates, the first respondent engaged with the applicant via email and provided information regarding cancellation figures received from the bank, and from then on there was a continuous engagement with the applicant and the third respondent on updates and requests. On 15 August 2022, the applicant went to the

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first and second respondent's office to sign the transfer documents transferring to the buyer.

[11] On 3 November 2022, the first respondent sent an email to the applicant, the third respondent and the agents regarding the confirmation of the property transfer and registration. The employee of the first respondent and second respondent confirmed further that the second respondent will take over the process and effect payments of the proceeds after receipt of such into the first respondent's trust account. The applicant proceeded to send his bank account details to the first and second respondent wherein the half share of the proceeds for the sale of property shall be effected.

[12] On 4 November 2022, after the applicant probed about his half share to the second respondent, the second respondent correspondent via email and in the email stated that there are court proceedings against the applicant wherein it is disputed that the applicant is entitled to the proceeds of the sale of the property, the second respondent asked the applicant to confirm this position and further stated that he is duty bound to withhold the funds in the trust until the dispute is resolved.

[13] The applicant responded to the correspondence and advised that the sale is subject to a divorce settlement and there is no exclusion for him to get half share, and that nothing prevents the second respondent from paying as there is no court order or pending application. On the same day the applicant was presented with a letter from Ronel De Villiers Attorneys (third respondent's attorneys) of which the letter averred that the third respondent had through her attorneys instituted legal proceedings against the applicant, in which the applicant denies that as he alleges he did not receive any documents instituting legal proceedings against him before the transfer and registration process.

[14] It was later transpired that the instituted legal proceedings were made on the 11 October 2022, but only emailed to the applicant on 7 November 2022, after the

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applicant has raised queries concerning the refusal by the second respondent to pay the proceeds on the sale of the property. The third respondent's attorneys went further to state that the applicant is not entitled to 50% share of the proceeds of the sale of the property from the joint estate and that the third respondent would approach the High Court for an urgent application.

### ***Issues for determination***

[15] The issues to be determined in this matter are the following:

15.1. Whether the applicant has made out a case for a final interdict?

15.2 Whether the mandate of the first and second respondent as the transferring attorneys were to further withhold the monies in the trust account pending finalization of the dispute between the applicant and the third respondent?

15.3. Whether the letter in question was a settlement agreement or a motivational letter in support of the third respondent's bond application?

### ***Law applicable to the facts***

*I now turn to apply the law supra to the facts in casu*

Whether the applicant has made out a case for a final interdict?

[16] The main issue to be determined is whether the applicant has made out a case for a final interdict, this remedy is based on the final determination of the rights of the parties to the litigation,<sup>1</sup> In order to grant a final interdict, there are requirements to be met and they are as follows:<sup>2</sup>

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<sup>1</sup> *Minister of Law and Order, Bophuthatswana, and Another v Committee of the Church Summit of Bophuthatswana and others* 1994 4 All SA 448 (B); 1994 3 SA 89 (B) at p97–98.

<sup>2</sup> *Id* at p 8. (citing *Setlogelo v Setlogelo* 1914 AD 221 227).

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- (a) a clear right;
  - (b) an injury actually committed or reasonably apprehended; and
  - (c) the absence of similar protection by any other ordinary remedy.

[17] In *Candid Electronics (Pty) Ltd v Merchandise Buying Syndicate*<sup>3</sup> It is therefore simply stated:

*“ in an application for a final interdict the grant or refusal of an interdict is a matter within the discretion of the court hearing the application and depends on the facts peculiar to each individual case and the right the applicant is seeking to enforce or protect.”*<sup>4</sup>

(a) A clear right.

[18] Substantive law deals with the right of an applicant in the matter,<sup>5</sup> and the *onus* lies on the applicant applying for a final interdict to establish on a balance of probability the facts and evidence which prove that he has a clear or definite right in terms of substantive law.<sup>6</sup> The right to be proven in these circumstances must be the right which can be protected and exists in law whether it is at common law or statutorily.<sup>7</sup>

[19] The applicant contends that he has a clear right to his share of proceeds of the sale of property, however his share is withheld unlawfully by the first and second respondent, who are fully aware that a decree of divorce exists relating to the equal division of the estate of the applicant and the respondent.

(b) an injury actually committed or reasonably apprehended

<sup>3</sup> (Pty) Ltd 1992 (2) SA 459 (C).

<sup>4</sup> Id at 326.

<sup>5</sup> *Minister of Law and Order, Bophuthatswana, and Another v Committee of the Church Summit of Bophuthatswana and others* 1994 4 All SA 448 (B); 1994 3 SA 89 (B) at p97–98.

<sup>6</sup> Id at p98.

<sup>7</sup> Id at p98.

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[20] In *Free State Gold areas ltd v Merriespruit (Orange Free State) Gold Mining Co Ltd and another*<sup>8</sup> the court held that for a final interdict to be granted an applicant need not establish that injury will arise or ensue as a result of the infringement of a right, but need only prove a reasonable apprehension of injury of such a nature which a reasonable man might consider and conceive of being confronted by the facts.

[21] The second requirement is essential for the granting of a final interdict. The phrase 'injury' means a breach or infraction of the right which has been shown or demonstrated and the prejudice that has resulted therefrom. The term 'injury' is used as a translation of *Van der Linden's* phrase 'een gepleegde feitlike' ('a fact committed'). It

has also been held that prejudice is not equivalent to damages. It will suffice to establish potential prejudice.<sup>9</sup>

[22] The test for the second requirement is objective and the courts decide on the facts established for the grounds of reasonable apprehension.<sup>10</sup> It must be noted that where there is a threatened infringement of an applicant's clear right, he need not wait for the actual infringement to occur, but may and is entitled to approach the court to restrain the threatened conduct which would establish and found such a breach or contravention of his/her rights.<sup>11</sup>

[23] The applicant contends that the first and second respondent are unlawfully withholding his share of the proceeds of the sale of the property. In that they took a decision not to pay, relying on unverified information that prejudices and injures the rights of the applicants to receive their share. The information the first and second respondents relied on was a motivation letter which stems from the period when the third respondents approached the applicant proposing to buy out the applicant from the property. A memorandum of agreement was presented where the applicant is the

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<sup>8</sup> 1961 (2) SA 505 (W) at 515-8.

<sup>9</sup> *Minister of Law and Order, Bophuthatswana, and Another v Committee of the Church Summit of Bophuthatswana and others* 1994 4 All SA 448 (B); 1994 3 SA 89 at p 98.

<sup>10</sup> *Id* at p99.

<sup>11</sup> *Minister of Justice v SA Associated Newspapers Ltd and Another* 1979 (3) SA 466 (c) at p474.



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seller, and the third respondent is a buyer. This motivation letter was meant to assist the third respondent for the purposes of buying out the applicant out of the bond held in community of property. However, the respondent used this motivation letter as an amendment to the settlement agreement and the first and second respondent are relying on it and accepting its contents at face value.

(c) Ad alternative remedy

[24] The third requirement for the granting of a final interdict is the absence of another adequate or satisfactory remedy.<sup>12</sup> Concerning the alternative remedy, the courts have determined that it must be adequate in the circumstances, be ordinary and reasonable, be a legal remedy and also grant similar protection to a party.<sup>13</sup> Generally an applicant will not obtain an interdict if he can be awarded adequate compensation or amends by way of damages.<sup>14</sup>

[25] The enquiry on this essential matter is whether an interdict is the only relief or remedy to help the applicant or is there a satisfactory alternative remedy. Furthermore, the circumstances relating to each case will indicate whether the award of damages is an adequate alternative remedy. The Court maintains discretion. It is a factor in the general discretion of the Court.<sup>15</sup>

[26] In *NCSPCA v Openshaw*<sup>16</sup> the SCA reiterated that an interdict is not a remedy for a past invasion of rights but is concerned with present or future infringements. According to the SCA, an interdict is appropriate only when future injury is feared. Where a wrongful act giving rise to the injury has already occurred, it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated. Once an applicant has established the three requisite elements for the grant of an

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<sup>12</sup> *Transvaal Property & Investment Co Ltd and Reinhold & Co v SA Townships Mining & Finance Corp Ltd and the Administrator* 1938 TPD at p521.

<sup>13</sup> *Free State Gold Areas Ltd v Merriespruit (Orange Free State) Gold Mining Co Ltd and Another* 1961 (2) SA 505 (w) at p524.

<sup>14</sup> See *Minister of Law and Order supra* at p99.

<sup>15</sup> *Beecham Group Ltd v B -M Group (Pty) Ltd* 1977 (1) SA 50 (t) at p54.

<sup>16</sup> *NCSPCA v Openshaw* 2008 (5) SA 339 (SCA) at para [20].

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interdict, the scope, if any, for refusing relief is limited. There is no general discretion to refuse relief.<sup>17</sup>

[27] The applicant contended that he does not have an alternative remedy, on the basis that he has continuously written to the second respondent requesting the money to be paid, however it fell on deaf ears.

Whether the mandate of the first and second respondent as the transferring attorneys were to further withhold the monies in the trust account pending finalisation of the dispute between the applicant and the third respondent?

[28] The first and second respondent contend that, they have never disputed the applicant's entitlement to the proceeds, however, there are competing claims between the applicant and the third respondent and none of these claims cannot be ignored. Therefore, should the first and second respondent pay the applicant the share of proceeds as he demands, this action may lead to negligence and may be sued by the third respondent. The first and second respondent submitted that they acted prudent as conveyancers by keeping the money in the trust account until the competing claims are resolved. In their contention they relied on Deed Registry Act 37 of 1947, where the Act makes a provision for the transferring of immovable property pursuant to the decree of divorce in terms of a settlement agreement incorporated in the decree of divorce.

[29] In terms of the Deeds Registries Act 37 of 1937(the Act), there is a process to be followed when divorced spouses acquires half share of his or her former spouse. Pursuant to a decree of divorce and a divorce settlement, section 45*bis* 1(a) of the Act makes a provision in terms for circumstances where an immovable property is transferred, and it states that:

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<sup>17</sup> *Hotz v UCT* 2017 (2) SA 485 (SCA) at para 20.

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*“(1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry and it—*

- (a) formed an asset in a joint estate of spouses who have been divorced, and one of them has lawfully acquired the share of his or her former spouse in the property, lease or bond; or*
- (b) forms or formed an asset in a joint estate, and a court has made an order, or has made an order and given an authorization, under section 20 or 21 (1) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), or under section 7 of the Recognition of Customary Marriages Act, 1998, as the case may be, in terms of which the property, lease or bond is awarded to one of the spouses,*

*the registrar may, on written application by the spouse concerned and accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property or on the lease or the bond that such spouse is entitled to deal with such property, lease or bond, and thereupon such spouse shall be entitled to deal therewith as if he or she had taken formal transfer or cession into his or her name of the share of the former spouse or his or her spouse, as the case may be, in the property, lease or bond.”*

[30] In terms of section 45(2) read with section 57 of Deeds Registries Act, it is further provided that:

*“If immovable property referred to in is hypothecated under a registered mortgage bond, the provisions of subsections (2), (3) and (4) of section 45 shall mutatis mutandis apply.*

*(b) If immovable property referred to in is hypothecated under a registered mortgage bond, the endorsement provided for in the said subsection shall not be made unless—*

*(i) such bond is cancelled; or*

*(ii) the said property is released from the bond; or*

*(iii) the former spouses jointly and severally assume liability in writing (in the prescribed form and signed by both such spouses and the legal holder of the*

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*bond) for all the indebtedness and renounce the exception de duobus vel pluribus reis debendi.”*

[31] In *Fischer v Ubomi Ushishi Trading CC and others*<sup>18</sup> the court held that the spouses married in community of property automatically become bound co-owners of immovable property in their joint estate. Upon termination of the joint estate of the parties to divorce, the bound co-ownership is replaced by free co-ownership until such time as the subdivision of the joint estate or immovable property is effected. It is only upon attestation of the deeds of partition transfer by the registrar that free co-ownership is replaced by individual.

[32] There is a question here on whether or not the money held in a trust is identifiable, in *Trustees of the Insolvent Estates of Whitehead v Dumas and Another*,<sup>19</sup> it was held that once money was transferred into a Bank account of another person, the money has been transferred. This would effectively mean, as the Court observed that the Bank becomes accountable to its customer and not a third party, the holder of the account in which the money was transferred. The money held in trust out of the proceeds of sale, which in this instance is 50%, the First and Second respondent, therefore had no claim to the money that has been transferred from the sale of the immovable property.

[33] The first respondent does not hold a real right over the money deposited into the trust account of the applicant and third respondents. This has to be the case because the first respondent was not deprived of the money without its consent and the principles submitted during the parties' submissions regarding the *commitxio*. As highlighted in *Gore, Leathern and Whitehead* cases, the bank is the owner of the funds held in trust and both applicant and third respondent has personal right to the money. The second respondent, merely have a claim afforded to them as trust creditors or conveyancing attorneys to deal with the transfers.

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<sup>18</sup> [2019] JOL 42441 (SCA) at para 27.

<sup>19</sup> [2013] ZASCA 19; 2013 (3) SA 331 (SCA) at para 14.

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[34] As the mandate existed and settlement agreement between the applicant and third respondent, the first /second respondent as a principle has a right to withdraw the funds from the bank without instructions and pay the applicant / third respondent, however it may not use the funds to set off its debts. Doing so, would offend the provisions of section 88(1)(b) of the LPC, which only allows the second respondent to keep excess funds once all the creditors of the trust have been paid off.

[35] The said deposit is not defined as excess. If there was an interest gained on the deposit that would be considered excess, it is rather regarded as a principal amount. Although there exists an ethical duty on the first respondent to return the money, section 88(1)b does not place a legal obligation to do so. As such, the obligation lies on the first respondent's account to ensure the money is returned to it. Therefore, the unused funds in a client 'trust account cannot be used to set off any legal fees owed to the firm concerned.

[36] The question arises whether or not the deposit is a debt. In *Drennaa Maud & Partners v Town Board of the township*<sup>20</sup>, the court describes a debt as:

*"In short, the debt does not refer to the cause of action, but more generally to the claim. In deciding whether a debt has become prescribed, one has to identify the debt, or put differently, what the claim was in the broad sense of the meaning of that word."*<sup>21</sup>

[37] The deposit ought to be considered a debt because the obligation to pay the money as per settlement of agreement to the first respondent, rested on the attorneys as a principle of the second respondent which is the holder of the trust account with the bank.

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<sup>20</sup> [1998] ZASCA 29; 1998 (3) SA 200 (SCA); [1998] 2 All SA 571 (A) at para 8.

<sup>21</sup> Id at para 8.

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Whether the letter in question was a redistribution agreement or a motivational letter in support of the third respondent's bond application?

[38] Another issue for determination is based on the competing claim of the letter that was written, the applicant says it is a motivation letter while the third respondent claims that it is the redistribution letter. The parties are interpreting the letter differently. Moreover, the first and second defendant interpret the letter as an agreement given its wording which states as follows:

*"please note that this is an agreement for the parties and motivation for the bond application of Ms Sinovuyo Matai.*

*Mr Matai is giving full ownership and transfer of property situated at 673 Milano Street Copperleaf Golf Estate Mnandi who shall in turn get a bond against property to be register (sic) in her name only.."*

[39] The first and second respondent submitted that because of the language used in the letter no other reasonable reader would interpret the document as a motivational letter since it mentions other assets. The document also speaks of the applicant taking over the property at 21 Burgundy Manavoni Centurion. The third respondent could not have followed the section 45 bis 1(a) procedure as it would have been costly, all she wanted was for the applicant to sign the sale agreement since the property was still in both their names, and the purpose of the conclusion of the redistribution document was to make it part of the settlement agreement through variation of settlement agreement and the applicant was made aware of this fact.

[40] In interpreting the document, it must be borne in mind that an agreement is also a contract, which is defined as an agreement entered with the intention of creating legal obligations <sup>22</sup>In this context there is an agreement entered into between the parties, an agreement is reached when parties come to a consensus accord on the

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<sup>22</sup> Van Rensburg ADJ, 'The Law of South Africa (LAWSA)Contract (Volume 9 - Third Edition)'31 October 2014.

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fact that they intend to create between them an obligation (or obligations) with a specific content.<sup>23</sup> The agreement must relate to:<sup>24</sup>

- (a) the fact that obligations are to be created;
- (b) the persons between whom the obligations are to be created; and
- (c) the content of the obligations, that is, to the performances to be rendered.

[41] Sometimes the meaning of the words and expressions used in forming of a contract maybe vague and ambiguous, even where the parties have recorded their agreement in a document. Writing does not guarantee clarity and precision.<sup>25</sup>

[42] In *Scottish Union & National Insurance Co Ltd v Native Recruiting Corporation*<sup>26</sup> the court held that:

*“We must gather the intention of the parties from the language of the contract itself, and if that language is clear, we must give effect to what the parties themselves have said; and we must presume that they knew the meaning of the words they used.”*<sup>27</sup>

[43] It was further held in *Cape Provincial Administration v Clifford Harris (Pty) Ltd* 1997<sup>28</sup> that according to the “golden rule” of interpretation, the language in the document must be given its ordinary grammatical meaning unless this would lead to an absurdity or a result that the parties never envisaged or unless it is shown that the parties used the words in a specialised, restricted or technical sense and not in their ordinary sense. If the meaning of the words used is clear and unambiguous, evidence is not admissible to contradict, add to or modify that meaning. This is sometimes referred to as the “plain meaning” rule.

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<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> 1934 AD 458.

<sup>27</sup> *Id* at para 465.

<sup>28</sup> (1) SA 439 (SCA) at p541.

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[44] The third respondent submits that the agreement expressly records that the parties have entered into an agreement and same will be utilised as motivation letter to the third respondent to apply for a home loan. The applicant has renounced his rights and benefits in respect of the immovable property to the third respondent.

[45] The applicant further submits that when the first and second respondent refused to pay him his share of the proceeds their conduct was unprofessional in that they were fully aware that a divorce exists relating to the equal share of the estate between the applicant and the third respondent. The first and second respondent ignored the order and settled to withhold the funds based on an assumption that a motivational letter intent to mean otherwise.

[46] In *Magidimisi v Premier of the Eastern Cape and Others*<sup>29</sup> Froneman J emphasized that:

*“One of the founding values of the Constitution is the rule of law. One of the fundamental principles of the rule of law is that everybody, including the state, is subject to the law and judgments of the courts. This is emphasized in the Constitution by the provision that an order of court binds all persons to whom and organs of state to which it applies. The Constitution requires all organs of state to assist and protect the courts and to ensure the effectiveness of courts.”*<sup>30</sup>

[47] In this case the first and second respondent are officers of the court, who were assisting with the sale of the property in question, upon understanding that there is a divorce, they were aware that there is a divorce settlement laying the terms with regards to the estate of the parties, and how on sale of the property in question, its proceeds should be divided, however in this case the proceeds are withheld in a trust account due to the parties competing claims.

[48] In *Minister of Tourism v Afriforum NPC*<sup>31</sup> the court laid down a definition of a

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<sup>29</sup> *Magidimisi v Premier of the Eastern Cape & others* [2006] JOL 17274 (C).

<sup>30</sup> *Id* para 18.

<sup>31</sup> *Minister of Tourism and Others v Afriforum NPC and Another* [2023] ZACC 7 para 23.



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moot case and held that:

*“A case is moot when there is no longer a live dispute or controversy between the parties or which would be resolved by a court’s decision. A case is also moot when a court’s decision would be of academic interest only.”*

[49] The applicant argues that the first and second respondent since they have been aware that a decree of divorce and a settlement exists thereof, ought to have absolved themselves from the proceedings by completing the mandate which was to transfer the proceeds of the sale of the property to the applicant and the third respondent in equal shares. This legal battle would have been between the applicant and the first respondent as to whom and how much every party is entitled.

[50] The first and second respondent submit that the applicant seeks to interdict them from deducting the amounts used for the clearance certificate and municipality, however these monies have already been used, therefore the applicant does not meet the requirement for a final interdict since the interdict is not for future occurrences.

***Reasons for decision***

[51] The applicant has not established a clear right to the share of the proceeds of the sale of the property based on the ground that the written agreement entered between the parties would make the third respondent the sole owner of the property in question. The applicant went further to take an action of transferring the property to the third respondent, which is what needs to be done in order to give full ownership of the property to the third respondent. This court also taking into account that the applicant also has his own property as his share from the division of the estate.

[52] In my view there is no prejudice that will emanate from the first and second respondent for withholding the money in the trust account since there are competing claims with regards to the letter and the payment of the proceeds. All the first and

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second respondent has done was to follow their client's mandate after being made aware of the pending litigation.

[53] According to the settlement agreement the parties agreed that the arrangement will prevail until such time as the youngest child becomes emancipated or turns 25 years old.

[54] Given the circumstances that the property in question and the initiative took by the third respondent to secure a home for their children which is the primary resident of the minor and third respondent, it is only fair that the proceeds of the sale be given to the third respondent.

### **Costs**

[55] Both parties sought costs against the other. This, however, did not detain argument in this application for any significant period.

[56] In so far as the award of costs is concerned, it is trite (and thus does not require lengthy exposition or repetition) that the general rule or principle is that costs should follow the result, or put differently, the successful litigant should be awarded his or her costs.

[57] This application is an abuse of the court process, and the court should mark its displeasure with the applicant in this regard (presumably by way of a costs order,) who has been legally represented throughout the relevant proceedings.

[58] I find nothing in the affidavits filed, and /or argument advanced, in this application, to deviate from the above general rule or principle.

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The above considered, and I am constrained to make the following order:

**Order**

[59] 59.1 The application against the first and second respondent is dismissed with costs on attorney and client scale.

59.2 The late filling of the third respondent 's replying affidavit is condoned, the counter application is granted.

59.3 The addendum entered into between the applicant and the third respondent on 1 February, in respect of a settlement agreement entered into between the parties on 14 December 2020, is made an order of court is incorporated and into the decree of divorce.

59.4. The proceeds from the sale relating to ERF 673 shall be paid in full to the third respondent.

59.5. The third respondent is authorised to transfer ownership of motor vehicle VW Polo GP 1.2 TSI with registration no FT 75 CW GP to the applicant.

59.6. The applicant is ordered to take all steps required to sign all documents necessary and do all things required and necessary to give effect to order, and particularly all things required to in order to pass transfer of the motor vehicle

59.7. The applicant is ordered to pay the costs of the application on an attorney and client scale.

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**MD BOTSI-THULARE AJ**

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**ACTING JUDGE OF THE HIGH COURT, PRETORIA**

**APPEARANCES:**

Applicant

Counsel for the Applicant

Instructed by

Adv Thembi Sebata

PVM Attorneys Inc

Counsel for the First and

Second Respondent

Instructed by

M Gwala SC

Ngeno and Mteto Inc

Counsel for the Third Respondent

Instructed by

Adv C Jacobs

Ronelle de Villiers Attorneys

DATE OF HEARING:

04 August 2023

DATE OF JUDGMENT:

03 November 2023