

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES:
No
(3) REVISED

26 April 2023

DATE

SIGNATURE

CASE NUMBER: 10540/2022

In the matter between

FNB FIDUCIARY(PTY)LTD
(Registration No: 1986/003488/07)

FIRST APPLICANT

PHUMZILE VUYISWA MASEKO SEIPOBI
(Identity No: [...])

SECOND APPLICANT

And

ERIC JACOB MAHLANGU (Identity No: [...])	FIRST	RESPONDENT
MUKHETHWA BANLEN MATAMELA NTHAMBELENI RESPONDENT (Identity No: [...])		SECOND
THAMATHAMA CHANTEL NTHAMBELENI (Identity No: [...])	THIRD	RESPONDENT
AUBREY MAKHUSHE (Identity No: [...])	FOURTH	RESPONDENT
WINNIE NTHOMBIFUTHI MAKHUSHE (Identity NO: [...])	FIFTH	RESPONDENT
SOLOMON MANDLA ZEMBE (Identity No:[...])	SIXTH	RESPONDENT
TABATSEANE ELISA ZEMBE (Identity No: [...])	SEVENTH	RESPONDENT
PHISSTECHNOLOGIES CC (Registration No: 2009/148943/23)	EIGHTH	RESPONDENT
THE REGISTRAR OF DEEDS, PRETORIA	NINETH	RESPONDENT
THE MASTER OF THE HIGH COURT, PRETORIA	TENTH	RESPONDENT

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The

judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 26 April 2023.

JUDGMENT

Collis J

INTRODUCTION

1. During March 2022, the applicants issued an urgent application with the sought set out in the notice of motion as follows:

"PART A

TAKE NOTICE THAT the applicant will make application on ***TUESDAY, 1 MARCH 2022 at 10h00*** or soon thereafter as counsel for the applicant may be heard for an order containing the following relief:

1. *The applicant's failure to comply with the rules pertaining to forms, time periods and service is condoned, and this matter is heard as one of urgency in accordance with rule 6(12) of the Uniform Rules of Court.*

2. *Pending the final determination of part B:*

2.1 the first respondent is interdicted and restrained from taking any further steps in the purported winding up of the estate of the late Timothy Karikari Maseko under Master's Ref: 4879/2024;

2.2 the first respondent is interdicted and restrained from taking any further steps in the purported winding up of the estate of the late Eleanor Nompithi Maseko under Master's Ref: 9472/2022;

2.3 the second and third respondents are forthwith interdicted and restrained from alienating or encumbering, or causing to be alienated or encumbered, the immovable property known as:

*ERF 553, THE DEEDS EXTENSION 15
REGISTRATION DIVISION J.R
THE PROVINCE OF GAUTENG
MEASURING 1238 (ONE THOUSAND TWO HUNDRED
AND THIRTY-EIGHT) SQUARE METRES
HELD BY DEED OF TRANSFER NO: T74386/2022
["**Erf 553**"]*

2.4 the fourth and fifth respondents are forthwith interdicted and restrained from alienating or encumbering, or causing to be alienated or encumbered, the immovable property known as:

*ERF 660 RIAMAPARK EXTENSION 4 TOWNSHIP
REGISTRATION DIVISION J.R
THE PROVINCE OF GAUTENG
MEASURING 1000 (ONE THOUSAND)
SQUARE METERS
HELD BY DEED OF TRANSFER NO. T4495/2021
["**ERF 660**"]*

2.5 the sixth and seventh respondents are forthwith interdicted and restrained from alienating or encumbering, or causing to be alienated or encumbered

*ERF 689 RIAMARPARK EXTENSION 4 TOWNSHIP
REGISTRATION DIVISION J.R.
THE PROVINCE OF GAUTENG
MEASURING 2000 (TWO THOUSAND)
SQUARE METERS
HELD BY DEED OF TRANSFER NO. T65939/2020
[“**Erf 689**”]*

3. The cost under Part A will stand over for determination in Part B.

4. Further and/or alternative relief.

TAKE NOTICE THAT *the affidavit of **PRISHANIA NAIDOO** annexed hereto, together with annexures and the confirmatory affidavits thereto, will be used in support of this application.*

PART B:

TAKE NOTICE THAT *the applicant intends making application to this Honourable Court on a date and at a time to be allocated after the hearing of Part A of this application for an order in the following terms:*

1. It is declared that:

- 1.1. *The first applicant is the lawful executor in the estate of the late Timothy Karikari Maseko under Master's reference number: 3673/2007.*
- 1.2. *Phumzile Vuyiswa Maseko Seipobi is the lawful executrix in the estate late Eleanor Nompithi Maseko under Master's reference number: 16458/09.*
2. *The following are declared invalid and void ab initio:*
 - 2.1. *the letters of authority and letters of executorship purportedly issued in favour of the first respondent in respect of the estate of the late Timothy Karikari Maseko under Master's reference number: 4879/2014;*
 - 2.2. *letters of authority and letters of executorship purportedly issued in favour of the first respondent in respect of the estate of the late Eleanor Nompithi Maseko under Master's reference number: 9472/2020;*
 - 2.3. *all acts taken by the first respondent in the purported winding up of the estate of the late Timothy Karikari Maseko under Master's ref: 4879/2014 and of the estate of the late Eleanor Nompithi Maseko under Master's reference number: 9472/2020;*
 - 2.4. *the sale of Erf 553 and its transfer to the second and third respondents;*
 - 2.5. *the sale of Erf 660 and its transfer to the fourth and fifth respondents;*

- 2.6. *the sale of Erf 689 and its transfer to the eighth respondent;*
- 2.7. *the sale of Erf 689 and its transfer to the sixth and seventh respondents;*
3. *The ninth respondent is directed to:*
 - 3.1. *cancel the transfer of Erf 553 to the second and third respondents, which was registered on 21 December 2020;*
 - 3.2. *cancel the transfer of Erf 660 to the fourth and fifth respondents, which was registered on 3 February 2021;*
 - 3.3. *cancel the transfer of Erf 689 to the eighth respondent, which was registered on 5 March 2020;*
 - 3.4. *cancel the transfer of Erf 689 to the sixth and seventh respondents, which was registered on 30 November 2020;*
 - 3.5. *endorse the title deeds of the properties accordingly.*
4. *The first respondent, will pay the applicants' costs of suit, on the scale as between attorney-and-client.*
5. *Further and/or alternative relief."*¹

¹ Notice of Motion Caselines 01-1

2. In relation to PART A, the applicants sought an order, to operate immediately, interdicting the further alienation or encumbrance of the properties until the final determination of PART B.² The order under PART A was granted on 3 March 2022.³
3. In this matter, this court was called upon to determine the relief sought in PART B of the application. Only the Sixth and Seven respondents are opposed to the relief sought in PART B of the application. The said respondents have also filed a counter-application to be determined by the court.

BACKGROUND

4. The deceased, Mr Timothy Karikari Maseko and Mrs Eleanor Nompithi Maseko were married in community of property.⁴ Each owned an undivided half-share in Erf 660, Erf 689 and Erf 553.⁵ The late Mr. Maseko died testate on 31 December 2006. In terms of his last will and testament the first applicant (*FNB*) was appointed as his executor on 3 September 2007.⁶ Mrs Maseko died intestate on 9 June 2002.⁷
5. On 11 August 2009, the second applicant was appointed as executor in the deceased Mrs Maseko's estate under Master's reference number 16458/2009, pursuant to the written nomination by her siblings specified hereunder.⁸ The

² Notice of Motion, CaseLines 01-2.

³ The order in Part A (*per Khumalo J*), CaseLines 12-1.

⁴ Founding Affidavit, CaseLines 01-26, at para 50.

⁵ Founding Affidavit, CaseLines 01-26, at para 51.

⁶ Founding Affidavit para 5.3 01-14

⁷ Founding Affidavit, CaseLines 01-26, at para 52.

⁸ Founding Affidavit, CaseLines 01-26, at para 53.

second applicant thereafter appointed FNB to attend to the winding-up of the late Mrs Maseko's deceased estate.⁹

6. As mentioned, on 31 December 2006, Mr Maseko died testate. In terms of his Will the beneficiaries were listed as follows namely:¹⁰

6.1. Mr Gandhi Leon Maseko.

6.2. Mr Zola Lincoln Maseko.

6.3. Mr Bongani Andrew Maseko.

6.4. The second applicant.

7. In terms of the Will of Mr. Maseko, FNB on 3 September 2007 was appointed by the Master as executor of his deceased estate.¹¹ FNB later appointed Messrs Elke de Klerk Attorneys & Conveyancers to attend to the transfer of the properties.¹²

8. As the appointed executors, FNB on 30 September 2011 had prepared a draft liquidation and distribution account in respect of the late Mrs Maseko's estate, wherein it recorded that:

8.1. The only two assets in the late Mrs Maseko's estate were Erf 553 and Erf 689, and that they were awarded to the late Mr Maseko's deceased estate pursuant to his marriage in community of property.¹³

⁹ Founding Affidavit, CaseLines 01-26, at para 54.

¹⁰ Founding Affidavit, CaseLines 01-26, at para 56.

¹¹ Founding Affidavit, CaseLines 01-27, at para 57.

¹² Founding Affidavit, CaseLines 01-29, at para 65.

¹³ Founding Affidavit, CaseLines 01-27, at para 58.1.

8.2. There was a cash shortfall in the sum of R37,363.66 in respect of the liabilities in the late Mrs Maseko's deceased estate.¹⁴

8.3. Bongani, Zola and Gandhi all signed written renunciations of the benefits accruing to them in respect of Erf 689 and Erf 660.¹⁵

9. On 14 November 2013, Gandhi passed away. He left behind two children.¹⁶

10. Almost a year later on 13 August 2014, a written redistribution agreement was concluded between Zola, Bongani, Phumzile and Gandhi's two heirs.

11. In terms of the redistribution agreement:

11.1. Phumzile acquired the one-half share from Zola and Gandhi's two heirs in respect of Erf 689 and Erf 660 in exchange for a cash consideration of R170,000; of which R85,000 would be paid to Zola and R42,500 would be paid to each of Gandhi's two heirs.¹⁷

11.2. Bongani, Phumzile and Zola acquired the one-quarter share in Erf 553 from Gandhi's two heirs for a cash consideration of R118,750; each receiving R59,375.¹⁸

¹⁴ Founding Affidavit, CaseLines 01-27, at para 58.2.

¹⁵ Founding Affidavit, CaseLines 01-28, at para 60.

¹⁶ Founding Affidavit, CaseLines 01-28, at para 61.

¹⁷ Founding Affidavit, CaseLines 01-28, at para 62.1.

¹⁸ Founding Affidavit, CaseLines 01-28, at para 62.2.

12. On 23 September 2015, a further redistribution agreement was concluded between Zola, Bongani, Phumzile and Gandhi's two heirs. This agreement is identical to the earlier iteration save that it records that Gandhi's heirs were duly represented by the executor of Gandhi's estate, Mamodupi Mohlala.¹⁹
13. From the affidavits filed it is clear that the winding-up of the deceased estates became protracted because the estate did not have the liquidity to meet the expenses in respect of the transfer of the properties. That fact is embodied by the significant amounts in respect of rates due to the City of Tshwane.²⁰
14. On 5 July 2017, the Master gave written permission to advertise the liquidation and distribution account in the late Mrs Maseko's deceased estate.²¹
15. On 30 September 2019 and without the knowledge of the applicants the first respondent was appointed as the Master's representative to wind-up the late Mr Maseko's deceased estate under letters of authority. The said letter of authority records that there was only a single asset in the late Mr Maseko's deceased estate, namely Erf 689.²²
16. The letter of authority is clearly incorrect since Erf 689 was registered in the name of the late Mrs Maseko's name.²³ Indeed, it is likely because of this fact

¹⁹ Founding Affidavit, CaseLines 01-29, at para 63.

²⁰ Founding Affidavit, CaseLines 01-29, at para 64.

²¹ Founding Affidavit, CaseLines 01-30, at para 66.

²² Founding Affidavit, CaseLines 01-30, at para 67.

²³ See para 15.1 *supra*.

that, on 5 November 2020, the first respondent was appointed as executor to the late Mrs Maseko's deceased estate under Master's reference number: 9472/2020.²⁴

17. Some five days later on 10 November 2020, the first respondent's appointment in respect of Mr Maseko's estate was changed from the Master's representative to executor to wind-up the late Mr Maseko's estate under letters of executorship with reference no.: 4879/14.²⁵

18. The appointment was done without FNB as the appointed executor ever being discharged or removed from its position as executor.

19. It was on this basis and at the direction of the first respondent that the properties were subsequently sold and transferred.

APPLICANTS' CASE

20. It is the applicants' case that the first respondent represented himself as the executor of the deceased estates of the late Mr and Mrs Maseko ("the deceased estates").²⁶

²⁴ Founding Affidavit, CaseLines 01-30, at para 68.

²⁵ Founding Affidavit, CaseLines 01-30, at para 69.

²⁶ Founding Affidavit CaseLines 01-19, at para 23.

21. In doing so, he sold the immovable properties belonging to those estates as follows:

21.1. On 3 February 2021, the first respondent transferred Erf 660, Riamarpark Extension 4 Township ("**Erf 660**") to the fourth & fifth respondents.²⁷

21.2. On 21 December 2020, the first respondent transferred Erf 553, The Reeds Extension 15 ("**Erf 553**") to the second & third respondents.²⁸

21.3. On 5 March 2020, the first respondent transferred Erf 689, Riamarpark Extension 4 Township ("**Erf 689**") to the eighth respondent. Thereafter, on 30 November 2020, the eighth respondent transferred Erf 689 to the sixth & seventh respondents.²⁹

22. This conduct of the first respondent, counsel contended on the facts that, *prima facie* bears out fraud on his part,³⁰ and it is on this basis that the applicants essentially seek the return of all three properties to the deceased estates so that they can be distributed to the heirs.³¹

23. In respect of the return of erven 660 and 553, the application is unopposed. Accordingly, counsel had argued that this application stands to be granted in respect of those properties as against the first to five respondents, with the first respondent to pay the costs on a punitive scale for his fraudulent misrepresentation.³²

²⁷ Founding Affidavit, CaseLines 01-20, at para 24.2.

²⁸ Founding Affidavit, CaseLines 01-20, at para 24.3.

²⁹ Founding Affidavit, CaseLines 01-10, at para 24.1.

³⁰ Founding Affidavit, CaseLines 01-23, at paras 31-36.

³¹ Part B of the Notice of Motion, CaseLines 01-6, at para 3.

³² The Notice of Motion, CaseLines 01-6, at para 4.

24. In respect of the sixth and seventh respondents the case made out against them stands on a different footing in relation to Erf 689. At present these respondents are currently the registered owners of Erf 689 having taken transfer of the property from the eighth respondent. In the present application they have given opposition to the relief sought in PART B of the application.

25. In respect of these respondents the argument advanced was that the sixth and seventh respondents could not have taken transfer of Erf 689 as the initial transfer thereof from the first respondent to the eighth respondent was tainted. It is on this basis that they argued that the eighth respondent in turn, could not have transferred Erf 689 to the sixth and seventh respondents.

RESPONDENTS' CASE

26. The sixth and seventh respondents have oppose the application. In essence they assert that they are the bona fide purchasers of ERF 689 and they have a stronger title to Erf 689 than the deceased estates.³³ The sixth and seventh respondents paid an amount of R 487 000 for the property, to the eighth respondent.³⁴

27. Prior thereto, Erf 689 was sold and transferred by the first respondent to the eighth respondent on 5 March 2020 and then by the eighth respondent to the sixth and seventh respondents on 30 November 2020.³⁵

³³ Answering Affidavit, CaseLines 15-27, at para 88.

³⁴ Answering Affidavit CaseLines 15 - 11 par 12 and 13.

³⁵ Founding Affidavit para 24.1 CaseLines 001-20 & paragraph 15 and 16 CaseLines 15-11 and 15-12.

28. On the basis that the sixth and seventh respondents are the bona fide purchasers of Erf 689 they assert that they have a stronger title to Erf 689 than the deceased estates and in respect of their counterclaim, it is their case that they should be reimbursed for the moneys paid by them for Erf 689.
29. On their behalf a further argument advanced is that the applicants had a duty of care towards the property of the deceased estates and ought to have treated it with more diligence as if it were their own property as custodians thereof. This, the argument advanced, the applicants had failed to do.
30. Furthermore, as the sixth and seventh respondents were not parties to any alleged fraud on the part of the first respondent and are merely the bona fide owners for value, it cannot be contended that the property which they had purchased should be returned by them.

ANALYSIS

31. A convenient point of departure, would be the fact that the only opposition to the application has been given by the sixth and seventh respondents. As such the relief sought against the remainder of the respondents remains unopposed and in the absence of any opposition, it follows that it should be granted.

32. The failure on the part of the first respondent to oppose the application is telling in circumstances where serious allegations of fraud are being made against him, namely that, in fact his appointment is tainted.
33. After all, it is the first respondent who together with the tenth respondent (*the Master*) can shed some light, on how his appointment as executor of the late Mr. Maseko's estate had occurred. This in circumstances where FNB had already been appointed executor on 3 September 2007 and where FNB had not been removed or discharged from its duties as the appointed executor. The first respondent can also shed light as to how he came to be appointed executor in the deceased estate of Mrs. Maseko.

THE LAW

34. The Administration of Estates Act, 1965 (the Act) provides in terms of section 13 that: *"no person may distribute or liquidate the estate of a deceased person except under letters of executorship, or under an endorsement made under section 15 of the Act"*.³⁶
35. Section 4(4) of the Act further provides that: *"If more than one Master has exercised jurisdiction in relation to the same estate or property, that estate or property must be administered under the exclusive supervision of the Master who first exercised jurisdiction, and any act or thing which has already been done under the authority of any other Master is thereupon cancelled"*.³⁷

³⁶ Section 13 of the Act.

³⁷ Section 4(4) of the Act.

36. The Act further provides that an executor's authority to act commences on the date he or she receives letters of executorship from the Master,³⁸ and that an executor may only be removed by the Master,³⁹ or by the Court.⁴⁰
37. In the absence of the removal of FNB by either the Master or by a Court, it must then follow that the appointment of the first respondent as executor in the estate late of Mr Maseko is questionable and fraudulent with the resultant consequences that any actions performed by him in terms of this deceased estate is tainted and falls to be set aside and declared void.
38. The first respondent can further shed light on how Erf 689 was sold to the eight respondent on 15 August 2019 and subsequently registered into the latter's name on 5 March 2020. The said property as mentioned was thereafter sold by the eight respondent to the sixth and seventh respondents and registered onto their names on 30 November 2020. In the absence of any affidavit filed by either the first respondent or the eight respondent, this Court has not been taken into confidence by any of these respondents by explaining how the sale and subsequent transfer of Erf 689 had taken place.
39. It is the applicants' case that FNB only became aware that the property had been transferred out of the estate to the various respondents during January

³⁸ *Klempman NO v Law Union and Rock Insurance Co Ltd* 1957 (1) SA 506 (W).

³⁹ Section 54(1)(b) of the Act.

⁴⁰ Section 54(1)(a) of the Act.

2022.⁴¹ This transpired when it received a demand from Messrs Robin Twaddle and Associates on 20 January 2022, acting on the instructions of the second applicant. The demand recorded that all three properties – Erf 553, Erf 660 and Erf 689 – had been transferred from the estate *“but not to the beneficiaries or by the executor of [the late Mr Maseko’s estate] in terms of the will”*. It called upon FNB to attend to the properties *“in line with the Will of the deceased and the redistribution agreement signed by the heirs”*.⁴²

40. Pursuant thereto and on 1 February 2022, FNB’s attorney, Mr Glover, spoke telephonically to the first respondent, pertinently enquiring from him how he came to be appointed. During such conversation the first respondent informed him that he had been appointed by the Master.⁴³

41. The Master as mentioned, also had not deemed it necessary to file a report prior to the hearing, to assist this court in its determination of the issues in dispute in relation to its office. The said application was served on the Master’s office as early as 22 March 2022 where allegations of impropriety are being made which presumedly occurred within the office of the Master.

42. Despite this, however, no report by the Master was filed before this court as at date of hearing. As such this Court has not been given a response from the Master to assist with the adjudication of this dispute. From the CaseLine profile of the matter it appears that the Master’s report was uploaded onto the

⁴¹ Founding Affidavit para 23 001- 19.

⁴² Annexure “FA4” to the Founding Affidavit, CaseLines 03-16.

⁴³ Founding Affidavit, CaseLines 01-23, at para 35.

electronic profile of the case and that this was done without first obtaining permission from the Court. It is for this reason that this Court did not have regard to the contents of the report.

43. Furthermore, in our law the principle of *nemo plus iuris* applies which sets out that transfer of ownership can only pass from one who has ownership to start with.⁴⁴

44. This principle was further expanded upon by the authors of *Silverberg and Schoeman's the Law of Property* who explained one of the cornerstones of our law of property, namely that no one may transfer more rights than he or she already has.⁴⁵

45. In addition, in South Africa we apply the abstract theory of transfer, whereby the validity of transfer of ownership is not dependent on the validity of the underlying transaction.⁴⁶ In terms of this theory, the requirements for the passing of ownership are twofold, namely delivery – which in the case of immovable property is affected by registration of transfer in the deeds office – coupled with a so-called “*real agreement*”.⁴⁷

⁴⁴ Replying Affidavit CaseLines 16-8, at para 7.

⁴⁵ Muller *et al.*, *Silverberg and Schoeman's the Law of Property*, at para 5.2.

⁴⁶ *Legator McKenna Inc and Another v Shea and Others* 2010 (1) SA 35 (SCA), at para 21.

⁴⁷ *Legator McKenna*, at para 22.

46. Where the real agreement however is defective, it follows that there then can be no intention to transfer ownership.⁴⁸ The absence of an intention on the part of the deceased estate constitutes a material defect in the “*real agreement*” concluded between the first respondent and any subsequent buyer. It is for this reason that ownership could not and did not pass to the eighth respondent and in turn it could not pass to the sixth and seventh respondents.

47. To the matter at hand, the first respondent had no authority given to him by the deceased estates to sell Erf 689 to the eighth respondent and it follows that the eighth respondent in turn had no authority to subsequently sell the property to the sixth and seventh respondents. This much the applicants assert in their replying affidavit at paragraph 7. In the absence of any authority by the first respondent, they would be entitled to the return of Erf 689 to the deceased estates from whomsoever is in possession thereof, whether *bona fide* or *mala fide*⁴⁹ and in the present instance the sixth and seventh respondents.

COUNTERCLAIM

48. The sixth and seventh respondents have counterclaimed against the applicants and the first and eighth respondents in the event that this court finds in favour of the applicants.

⁴⁸ Quartermark Investments (Pty) Ltd v Mkhwanazi and Another 2014 (3) SA 96 (SCA), at para 25.

⁴⁹ Voet Commentarius 6 1 22; Wainwright & Co v Trustee Assigned Estate S Hassan Mahomed (1908) 29 NLR 619, at 626-627; Mngadi v Ntuli 1981 3 SA 478 (D).

49. As per the Answering affidavit, the sixth and seventh respondents have set out that their counterclaim is premised on the expenses incurred in relation to the purchasing of the property.⁵⁰

50. They further allege that in the event that the court finds that the counter application amounts to a factual dispute, this court should refer the damages for oral evidence and suspend the application until a final determination of these disputes.⁵¹

51. If one has regard to the manner in which the counter-application has been pleaded it merely alleges that the applicants by way of a dereliction of duties and having taken an inordinate amount of time in finalising the estates had resulted in the Erf 689 being sold to the eighth respondent and later in turn to them.⁵²

52. The pleaded counterclaim, falls short of expressly avering what actions or inactions by the applicants negligently resulted in damages being suffered by them. Furthermore, no supporting documentation were annexed to the answering affidavit in the counterclaim to justify the expenses incurred or that those expenses were fair and reasonably incurred.

⁵⁰ Answering Affidavit, CaseLines 15-32, at para 108.

⁵¹ Answering Affidavit Caselines 15-33 para 109

⁵² Answering Affidavit Caselines 15-31 para 105.

53. In the absence thereof, this Court is not persuaded that the counterclaim can be sustained and consequently it falls to be dismissed with costs.

COSTS

54. The awarding of costs is always within the discretion of a court.

55. The applicants in as far as the issue of costs is concerned, had argued that a punitive costs order is justified where a party acts dishonestly or fraudulently.⁵³ The applicants seek a punitive costs order as against both the first respondent, the sixth and seventh respondents albeit on different grounds.

56. On behalf of the applicants it was argued that in the facts of this case bear out support for the contention that the first respondent should receive the censure of this court as he acted fraudulently and dishonestly.

57. In the absence of any opposition by the first respondent, I cannot but not agree with these sentiments expressed by the applicants regarding costs. As per PART B, this in any event is what the applicants had pleaded for, namely, that in the event of being successful the costs of the application should be paid by the first respondent on a scale as between attorney and client.

⁵³ *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC), at para 8.

58. I disagree that the opposition by the sixth and seventh respondents was vexatious in the present matter. These respondents became *bona fide* owners of Erf 689, this after having purchased same from the eighth respondent. Any person having purchased a property after having paid a consideration would be expected and entitled to oppose any vindication to the property which it should face. In the circumstances a punitive costs order is not warranted and as such will not be awarded by this Court.

59. Consequently, the sixth and seventh respondents will only be ordered to pay the costs on a party and party scale.

ORDER

60. In the result the following order is made:

60.1. The first applicant is declared the lawful executor in the estate of the late Timothy Karikari Maseko under Master's reference number: 3673/2007.

60.2. Phumzile Vuyiswa Maseko Seipobi is declared the lawful executrix in the estate late Eleanor Nompithi Maseko under Master's reference number: 16458/09.

61. The following are declared invalid and void *ab initio*:

- 61.1. the letters of authority and letters of executorship purportedly issued in favour of the first respondent in respect of the estate of the late Timothy Karikari Maseko under Master's reference number: 4879/2014;
- 61.2. the letters of authority and letters of executorship purportedly issued in favour of the first respondent in respect of the estate of the late Eleanor Nompithi Maseko under Master's reference number: 9472/2020;
- 61.3. all acts taken by the first respondent in the purported winding up of the estate of the late Timothy Karikari Maseko under Master's ref: 4879/2014 and of the estate of the late Eleanor Nompithi Maseko under Master's reference number: 9472/2020;
- 61.4. the sale and transfer of the following immovable property to the second and third respondents:

ERF 553, THE REEDS EXTENSION
15 REGISTRATION DIVISION J.R.
THE PROVINCE OF GAUTENG
MEASURING 1238 (ONE THOUSAND TWO HUNDRED AND
THIRTY- EIGHT) SQUARE METRES
HELD BY DEED OF TRANSFER NO.
T74386/2020 [**Erf 553**]

61.5. the sale and transfer of the following immovable property to the fourth and fifth respondents:

ERF 660 RIAMARPARK EXTENSION 4
TOWNSHIP REGISTRATION DIVISION.J.R.
THE PROVINCE OF GAUTENG
MEASURING 1000 (ONE THOUSAND) SQUARE
METRES HELD BY DEED OF TRANSFER NO.
T4495/2021
[“**Erf 660**”]

61.6 the sale and transfer of the following immovable property to the eighth respondent

ERF 689 RIAMARPARK EXTENSION 4
TOWNSHIP REGISTRATION DIVISION .J.R.
THE PROVINCE OF GAUTENG

MEASURING 2000 (TWO THOUSAND) SQUARE
METRES HELD BY DEED OF TRANSFER NO.
T65939/2020
[“**Erf 689**”]

61.7 the sale of Erf 689 and its transfer to the sixth and seventh respondents;

62. The ninth respondent is directed to:

62.1 cancel the transfer of Erf 553 to the second and third respondents, which was registered on 21 December 2020;

62.2 cancel the transfer of Erf 660 to the fourth and fifth respondents, which was registered on 3 February 2021;

62.3 cancel the transfer of Erf 689 to the eighth respondent, which was registered on 5 March 2020;

62.4 cancel the transfer of Erf 689 to the sixth and seventh respondents, which was registered on 30 November 2020;

62.5 endorse the title deeds of the properties accordingly.

63. The first respondent, will pay the applicants’ costs of suit on an attorney and client scale jointly with the sixth and seventh

respondents on a party and party scale.

64. The sixth and seventh respondents counter-application is dismissed with costs.



C. J. COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

APPEARANCES:

Attorney for the Applicants: Glover Kanniepan Inc. Attorneys

Counsel for the Applicants: Adv P MacKenzie

Attorney for the 1st-5: **No Appearance noted**

and 8th-10th Respondents

Counsel for the 1st-5th

And 8th-10th Respondents **No Appearance noted**

Attorney for the 6th and 7th Respondents: BPG Inc. Attorneys

Counsel for the 6th and 7th Respondents: Adv HC Van Zyl.

Date of Hearing: 04 November 2022

Date of Judgment: 26 April 2023