


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 30515/2021

DATE: 27-10-2022

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.
DATE 17 JANUARY 2023
SIGNATURE 

10 In the matter between

TREVOR ALLAN MOORE

Plaintiff

and

ARLENE VAN GOIDENSENHOVEN

First Defendant

THE CURRENT OCCUPIERS OF 26

BELLINGHAM CRESCENT

Second Defendant

J U D G M E N T
(LEAVE TO APPEAL)

20

DAVIS J:

In the judgment delivered in respect of the application which served before this Court earlier this year I referred to the parties by their first names. This was to indicate the close personal relationship which had existed between them to such

an extent that one partner in a loving relationship would transfer a property into the other partner's name albeit with certain disputed conditions.

The argument before me today in the application for leave to appeal referred to the parties in a more formal manner and I shall therefore follow the more formal appellation. Nine years ago the applicant purchased certain immovable property and had it registered in the name of the first respondent. This is confirmed by the applicant's particulars of claim in the main action.

The relevance of the transfer and why it became the subject of the main action, was that the plaintiff therein seeks to have the transfer reversed based on the parties' relationship having terminated some four years later in 2017. In the particulars of claim the applicant herein, then as plaintiff alleges that he had been entitled to the retransfer of the property upon termination of the relationship alternatively upon a demand which he had then made, further alternatively upon a demand made in the particulars of claim which was issued a year later in 2018.

Some three years later, in an application which, on the face of it, had been launched on 21 June 2021, but with

an inserted date of application yet a year later, being 7 March 2022, the applicant sought two sets of relief. The first related to discovery of documents and the second to payment of rental proceeds of the property into his attorney's trust account. It is alleged that this last was a safeguarding measure although the fruits of the property had not been claimed in the action.

No particulars could be furnished to the court as to the progress of the main action despite the fact that *litis contestatio* had taken place as long ago as May 2019. In the judgment I have set out the reasons for the refusal of an interim interdict in this regard. In the application for leave to appeal not much was made about the relief relating to discovery of documents or furnishing of rental particulars.

Much was however made regarding the money aspect. And Mr van Rensburg SC who appeared for the applicant argued strenuously that the first respondent was a lady of straw and should an interim interdict not have been granted the applicant will suffer irreparable harm. All the allegations regarding these aspects were however in generalised terms without particularity of the actual amounts lost and the like.


Despite having threatened more than once that the particulars of claim could have been amended to include such a monetary claim and that such a claim needed to be protected, nothing of that kind had happened. Having regard to the facts of the matter and all these arguments, the applicant has not satisfied this Court in indicating that on appeal another Court would come to a different conclusion and would have granted the interim interdict in the fashion claimed.

10

Having reached that conclusion I find no cogent reason why the normal principle regarding cost should not apply namely that it should follow the event. The order is accordingly as follows:

The application for leave to appeal is refused with costs.

20


DAVIS J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA
DATE OF HANDING DOWN OF
JUDGMENT: 27 October 2022