


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

CASE NO: 045904/2024
DOH: 07 MAY 2024

(1)	REPORTABLE: YES (NO)
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	
SIGNATURE	DATE
	14/5/2024

In the matter between:

AUBREY EUGENE BEYERS

FIRST APPLICANT

AUBREY EUGENE BEYERS N.O

SECOND APPLICANT

ROELEEN JOHANNA VAN DER WALT

THIRD APPLICANT

ROELEEN JOHANNA VAN DER WALT N.O

FOURTH APPLICANT

and

KARMEN VAN DER WALT

FIRST RESPONDENT

KARMEN VAN DER WALT N.O

SECOND RESPONDENT

MASTER OF THE HIGH COURT, PRETORIA

THIRD RESPONDENT

LOUISE VAN DER WALT

FOURTH RESPONDENT

STEFANIE VAN DER WALT

FIFTH RESPONDENT

This Judgment was handed down electronically and by circulation to the parties' legal representatives' by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 14 May 2024.

JUDGMENT

Mali J

[1] On 7 August 2024, the applicants approached this Court by way of urgency, seeking the appointment of first and third applicants as co- Trustees of the Lemhrod Trust (the Trust) established by the late Stefanus Louis van der Walt (the deceased). They also sought that certain legal acts performed by the first applicant as *de facto* trustee of the Trust, before and pending the appointment of the first applicant by the third respondent be ratified and declared lawful and of full force and effect. The application is not opposed , in particular by the third respondent, the Master of the High Court Pretoria ("the Master"). There are no orders sought against the other respondents.

[2] The first applicant is a practising attorney acting in his personal capacity. He is also the second applicant cited in his official capacity as duly authorised administrator of the deceased estate of the deceased. He represented all the applicants. The third applicant is the surviving spouse of the deceased, acting in her personal capacity. The fourth applicant is the same person as the third applicant, but is cited and acting in her official capacity as duly appointed executrix in the deceased estate.

[3] The first respondent is the eldest daughter of the deceased cited in her personal capacity. The second respondent is the same person as the first respondent, but is cited in her official capacity as nominated trustee of the Trust, in terms of the last will and testament of the deceased. The third respondent is the Master. The fourth respondent is the second eldest daughter of the deceased. The fifth respondent is the youngest daughter of the deceased.

BACKGROUND

[4] The deceased who was the only trustee of the Trust died on 29 April 2023. Before his passing on 20 February 2023, the deceased had signed a resolution nominating the first and third applicant as co-trustees of the Trust. On 9 March 2023 the first and third applicant submitted the Trust Amendment Form for their appointment to the Master. The deceased tragically passed away before the appointment was finalised by the Master. On 14 December 2023, in response to the letter of the first applicant of 9 March 2023, the Master wrote to the first applicant requesting the original Letters of Authority.

[5] The request reads in part, “*If it is [ORIGINAL Letters of Authority] lost, an original Sworn Affidavit stating that the original Letters of Authority is lost. Kindly take note that the use of expired Letters of Authority will amount to fraud since the Letter has been revoked by the Master.*” The averment by the first applicant in the affidavit dated 25 January 2024 confirms that he is not in possession of the original Letter of Authority and that should the Master not already be in possession of the original Letter of Authority, same is obviously lost.

[6] The first respondent is nominated as a co-trustee in terms of the deceased's will. At the launching of this application the Master had not yet issued the first respondent with the necessary documentation and acceptance of trusteeship, pursuant to her nomination as a trustee in terms of the deceased's will.

[7] The first applicant later entered into an offer to purchase without the Letters of Authority in respect of the Trust's immovable property situated in Port Alfred, Eastern Cape ("PA property"). The Letters of Authority are urgently required in order to transfer the PA property into the name of the purchaser.

URGENCY

[8] The issue of whether a matter should be enrolled and heard as an urgent application is governed by the provisions of 6(12) of the Uniform Rules. The subrules allow for the dispensation with the forms provided for in the rules. The Rules further provide that in the affidavit in support of an urgent applicant the applicant "... *shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded a substantial redress at a hearing in due course.*" In *East Rock Trading 7 (PTY) LTD and another v Eagle Valley Granite and others*¹ it is held :

" The import thereof is that the procedure set out in rule 6 (12) is not there for taking.....The rules allow the court to come to the assistance of a litigant because if

¹ 11/337567 South Gauteng High Court, Johannesburg para 6

the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress."

[9] The first applicant submitted that he entered into an offer to purchase without the Letters of Authority in respect of the PA property. The reason for selling the PA property is that the Trust is indebted to the deceased estate in the amount of R1 108 824.00. The Trust is also indebted to Nedbank in the amount of R403 933.00, there is apprehension that Nedbank will sell the PA property in execution of the judgment it might be granted.

[10] Furthermore some of the respondents are burdened with debts of the Trust arising from paying for the maintenance of the PA Property. The deceased used to pay for the maintenance of the PA property out of his own pocket. It has become apparent that the Trust cannot afford to retain the immovable property, hence the potential trustees embarked on the sale of the PA property. According to the first applicant he has already accepted the offer and seeks the order to ratify this action. The sale of the property was necessitated by approximately a year delay to obtain Letters of Authority from the Master appointing the trustees. The first applicant asked the court to condone its acceptance of the offer.

[11] At paragraph 6.11 the first applicant states:

"What makes the matters even more urgent is the fact that the Port Alfred property has been sold and the registration of transfer is pending." At paragraph 6.16 it is stated:

“ Ms Van Dalen indicated that she is willing to prepare the necessary documentation in order to effect the transfer. However, she informed me that a Power of Attorney to pass transfer, will soon have to be signed by me in the capacity as duly authorised trustee on behalf of the Trust. She indicated without the Letters of Authority , she would not be able to verify or accept such a Power of Attorney to pass transfer, which would effectively half the entire transaction.”

[12] The copy of the offer to purchase found on 02-94-105 on case lines, is not signed by both the seller and purchaser. Section 2(1) of the Alienation of Land Act of the Act², in order for an agreement relating to the sale of immovable property to be valid, it must be in writing signed by the parties thereto or by their agents acting on their written authority. *“It is well-settled law that there can be no ratification of an agreement which a statutory prohibition has rendered ab initio void in the sense that it is to be regarded as never having been concluded.”*³

[13] Section 6 (1) of the Trust Property Control Act⁴ (“TPCA”) provides that, any person whose appointment as trustee in terms of trust instrument, section 7 or a court order comes into force after the commencement of this Act, shall act in that capacity only if authorised thereto in writing by the Master. Section 9 (1) of the TPCA provides that a trustee that had been authorised in terms of section 6 (1) shall in the performance of his duties and the exercise of his power act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of one another.

² Act 68 of 1981.

³ Neugarten and Others vs Standard Bank of South Africa Ltd 1989 (1) SA 797 (A).

⁴ Act 57 of 1988.

[14] In *MJK v II K*⁵ it is held :

"The separation of enjoyment and control is designed to ensure that the trustees in whom the assets of the trust vest are impartial and that they exercise diligence in protecting the interests of the trust beneficiaries. Section 12 provides for the separation of the trust assets from the personal assets of a trustee unless the trustee is also the beneficiary of the same trust."

[15] The first applicant's conduct of entering into a sale agreement with the hope of ratification and obtaining the order for the appointment of the trustees, is not in compliance with exercise of care, diligence and other requirements set out in the law above. Even if the offer to purchase was good in law, the first applicant could have realised the urgency of the matter before selling the PA property in keeping with his fiduciary duties.



[16] In the founding affidavit there is no averment as to why the applicant cannot be afforded substantial redress at the hearing in due course. The closest averment in the founding affidavit is that the matter will take 3 months to be enrolled in the ordinary course. The first applicant decried the chaos and the closure of the Master's office. There was nothing placed before the court demonstrating the chaos and if there was any, how it affected the case of the applicants. The date of the affidavit dealing with the loss of the Original Letter of Authority is 25 January 2024. Nevertheless there is no indication as to when this affidavit was submitted to the Master. Also in the first applicant's founding affidavit at paragraph 6.7 it is not stated when the response was filed with the Master.

⁵ (360/2021) [2022] ZASCA 203 (2) SA 158 para 32

[17] The information about the closure of the office of the Master was submitted from the bar. In the event the closure of the Master's office is truly implicated, the Court cannot automatically be clothed with powers to usurp the duties of the Master. In conclusion the application is not urgent and stands to be struck from the urgent roll, for lack of urgency.

ORDER

1. The application is struck from the urgent roll, for lack of urgency.
2. There is no order to costs.

N.P. MALI
JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Applicants:

Adv N.F de Jager
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Counsel for Respondents:

Unopposed