REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case Number**: 37430/2017**

(1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGES:

DATE	SIGNATURE

In the matter between:

R S **(Identity No. …)**	Applicant
And	
R L **(Identity No. …)**	First Respondent
ARIE HENDRIK KUHN	Second Respondent

DAYJUR TRADING AND INVESTMENT CC Third Respondent
Registration Number: 1998/04827/23

COMPANY AND INTELLECTUAL PROPERTY COMMISSION Fourth Respondent

BRENDA LYN ANDERSON Fifth Respondent

JUDGMENT

[1] This is an application for declaratory relief. The applicant, Mr R seeks that he be declared to be a 5 transferred to him by the first respondent, Mrs R, and that he be given copies of financial records of the close corporation.

[2] Mr and Mrs R were formerly married to one another out of community of property with the inclusion of the accrual system.

[3] During their marriage and on 27 October 1998 they acquired the third respondent which was then a shelf corporation and were each registered as holding 50% of the members interest in the close corporation. The purpose of the close corporation was to purchase and own immovable property.

[4] The parties were divorced on 13 November 2009. The divorce proceeded on an unopposed basis however the proprietal aspects had not been settled. The order of divorce was to the effect only that the marriage was dissolved and provision made for the parental responsibilities and rights of the children of the parties who were then minors.

[5] The unfortunate result was that the proprietal consequences of the marriage were not dealt with at all and remained opposed.

[6] On 13 January 2013 and pursuant to the applicants having applied to this court for an order relating to the division of the parties respective estates in accordance with the accrual system the fifth respondent, Ms Anderson, a forensic auditor was appointed to determine the value of the accrual.

[7] As part of the task which fell to Ms Anderson she was required to determine the value of the members interest in the close corporation as this stood at the date of divorce. During her investigations she discovered that during June 2012 there had been a purported transfer of Mr R's 50% members interest in the close corporation to Ms R.

[8] It emerged further that the transfer of the members interest took place on the basis of a power of attorney which was delivered to Easytax a company which performed, *inter alia,* services such as the registration of changes to records at CIPC.

[9] It is not in dispute that the power of attorney which purported to be signed by both Mr and Ms R was delivered by Ms R. It is furthermore not in dispute that the signature of Mr R on the power of attorney is a forgery. Ms R does not deal with these aspects at all. Instead, she contents herself with relying on an alleged oral agreement in terms of which she says that she purchased Mr R's in interest in the close corporation. She indicates that she also paid an amount of R500, 000 to Mr R in consideration for this purchase. This amount she alleges was part of an amount that she had paid to Mr R at the time of their separation and that this was considered as being compensation for the members interest. The first respondent alleges further that she paid an additional amount of more than R1 500 000.00 to the applicant as further compensation for his shares.

[10] Ms Mbali , an employee of Easytax who dealt with the registration, states that the members interest was changed on the instruction of Mrs R. She states that the power of attorney in issue was provided to her pursuant to a request that it be furnished in order to allow her to register the change of details.

[11] There is no dispute that the power of attorney was not signed by Mr R. Mrs R studiously avoids dealing with the document and the forgery of Mr R's signature thereon.

[12] It is clear in the circumstances that the transfer was effected without a valid power of attorney and it is thus void.

[13] The relief sought by Mr R is far-reaching. It seeks that ownership of the members interest be declared and that there be a formal retransfer, furthermore certain documents are requested. I do not believe that the case made out allows for quite such extensive relief. The applicant has however made out a case to the effect that the purported transfer of the members interest effected by means of the fraudulent special power of attorney should be declared null and void.

[14] As to costs, it appears clear that the void transfer took place on the instruction given by Mrs R and that she was involved in the forgery of the document used to effect such transfer. It appears that she has had ample opportunity to consent to the relief which is claimed, at least in relation to the declaration sought as to the applicant's members interests. In light of all the circumstances, her opposition is vexatious. I take into account in this regard that she represented herself in these proceedings. She did so confidently and there was no sense that she was not able to appreciate the nature of the issues.

[15] I thus make the following order:

1. the change in members interest in the third respondent affected 13 June 2012 is declared null and void.

2. the first respondent is to pay the costs of the applicant on the scale as between attorney and client.

FISHER J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

GAUTENG LOCAL DIVISION, JOHANNESBUR

Date of Hearing: 4 June 2018

Judgment Delivered: 5 July 2018

APPEARANCES:

For the Applicant	**:** Adv W Davel.
Instructed by	**:** C/O Swanepoel Attorneys.
For the First Respondent	**:** The First Respondent appeared in person.