

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED. ☒

28/3/11
DATE


SIGNATURE

CASE NUMBER: 3133/2011

28/3/2011

In the matter between:

DESIDERUIS RASMUS ERASMUS

First Applicant

SEC 74 ADMINISTRATOR

Second Applicant

and

MARIA MAGDALENA STANDER

Respondent

JUDGMENT

GOODEY AJ:

[1] INTRODUCTION:

(1.1) This is an application in terms of Rule 49(11).

(1.2) The Applicants seek an order:

"2. *the Applicants be granted leave to immediately execute in terms of paragraph 2 to 5 of the order by His Lordship Justice Goodey of the 9th of February 2011, pending the Respondent's application for leave to appeal;*

3. *Costs of the application on the scale as between attorney and client".*

(1.3) In view of the time constraints and the urgency involved, this is a brief judgment. If so requested, I will give more comprehensive reasons later.

[2] **BACKGROUND:**

(2.1) This matter came before me in the urgent Court on the 1st February 2011.

(2.2) An answering affidavit was only filed on 26 January 2011 at 12:50.

- (2.3) The replying affidavit, a brief affidavit, was filed only on 28 January 2011. In my discretion I accepted the replying affidavit being only 16 pages and since I have already perused the other papers and considered the matter urgent enough to proceed on the urgent roll.
- (2.4) The matter then stood down for Friday, the 4th of February 2011 and the matter was argued and by agreement the judgment was delivered on the 9th of February 2011.
- (2.5) The Respondent then filled an application for leave to appeal dated the 14th February 2011 which I was prepared to hear, but both parties indicated that they were awaiting the typed judgment. The latter has since been revised and send back to the relevant transcription section.
- (2.6) The Applicants have now lodged this R49(11) application.

[3] BRIEF DISCUSSION:

- (3.1) It is common cause that the First Applicant is the 100% member of the Second Applicant.

- (3.2) In view of the aforesaid the Applicants argue that the Respondent has no *locus standi* with regards to the administrations listed in the judgment by His Lordship Ledwaba, to be kept in safety by the Sheriff.
- (3.3) On the other hand, the Respondent argue (despite page 5, par 3 of the founding affidavit) and opposing affidavit (page 17, par 5) that the First Applicant is nothing more than the *de facto* member of the Second Applicant.
- (3.4) Furthermore, the Respondent argues that my order is to wide, *inter alia* because of the fact that a trust of the Respondent is registered owner of the building and not all the assets can be removed as some belong to the Respondent.

[4] **CONCLUSION:**

- (4.1) I am not convinced that Applicant is not entitled (in principle) to the relief sought. However, I agree with Miss Fourie that the order is ostensibly to wide as far as paragraphs 3 and 4 thereof are concerned – more specific reference to the assets of the 2nd Applicant is necessary.

THEREFORE I make the following order:

1. Paragraphs 1 and 2 (including 2.1 to 2.6) of my order dated the 9th February 2011 remain as are as well as paragraphs 5 and 6 thereof;
2. Paragraphs 3 and 4 of my order of the 9th of February 2011 to read as follows:

“3. THAT the Respondent immediately hand over to the Sherriff all keys of the business of the 2nd Applicant, Sec 74 Administrator CC with registration number 1993/002053/23 at 66 Ferreira street, Nelspruit, Mpumalanga only to be used within 48 hours in order to comply with paragraph 4 hereafter and then be handed back to the Respondent;

4. THAT the Applicants, under supervision of the Sheriff and accompanied by an IT specialist, remove all movable assets of the 2nd applicant but specifically inclusive of the 2nd Applicants computer system and back-ups and all files and documents relating to the administrations and matters referred to in prayer 5 hereinafter from the said premises of

the 2nd Applicant at 66 Ferreira street, Nelspruit,
Mpumalanga;"

3. Respondent is ordered to pay the costs of this application.



GOODEY AJ 28/3/11

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