

Not Reportable

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE – PORT ELIZABETH**

Case No: 2133/2013

In the matter between:

NOSIZWE KRAAI

First Applicant

MNINAWWE SILINGA N.O

Second Applicant

PUMLA SILINGA N.O.

Third Applicant

and

KHULILE PHILLIP MASIZA

First Respondent

MALIBONGWE ROBERT KRAAI

Second Respondent

MZWANDILE MPHAHLA

Third Respondent

ZANELE MPAHLA

Fourth Respondent

REGISTRAR OF DEEDS, CAPE TOWN

Fifth Respondent

JUDGMENT

REVELAS J

[1] This is the return day of a *rule nisi*. The only issue in dispute is the question of costs. The applicants brought an urgent application seeking various orders arising from the alienation of certain immovable property, which the first applicant and second respondent inherited in undivided shares. The first applicant holds seventy five percent shares in the property and the second respondent twenty five percent.

[2] The first applicant seeks, pending the determination of an action instituted against the second, third and fourth respondents, an order prohibiting the first to fourth respondents from transferring the entire property in question, in terms of an agreement of sale which the first applicant contends, is a nullity because the signature on the deed of sale, purporting to be hers is a forgery. This agreement was allegedly entered into between the first applicant and second respondents as sellers, with the third and fourth respondents as purchasers. The first respondent is the attorney who attended to this agreement and the transfer of the property. Prior to the aforesaid agreement, the second and third applicants had already entered into an agreement of sale with the first applicant on 16 November 2012, in terms of which they purchased her fifty percent share of the property. It became common cause between the parties at the onset of the hearing of this application that this was a valid sale.

[3] The second and third applicants (trustees of the Pepi Selinga Development Consultation Trust) sought a declaratory to the effect that their agreement of sale is valid and enforceable in all respects. In addition, they also sought an interdict prohibiting the first to fourth respondents from transferring the property. (The fifth respondent is the Registrar of Deeds).

[4] It was conceded by Mr Nobatana, on behalf of the first to fourth respondents, that the agreement concluded with the second and third applicants, pre-dates and therefore supercedes the agreement concluded between the first applicant and the second respondent with the third and fourth respondents. Accordingly the relief sought by the second and third applicants should be granted.

[5] Since the second and third applicants were successful in obtaining the relief sought by them, the first to fourth respondents are liable to pay their costs of the application. There are several indications on the papers, particularly the annexures, that the first applicant's signature may not be a forgery. Counsel for the first applicant did not attempt to persuade me that it was. Although that factual dispute is not to be determined on these papers, I have however formed the view that the first applicant has put up a rather weak case in that regard and the first applicant should not be entitled to her costs in these circumstances, even though she was successful in obtaining an interdict against the transfer of the property.

[6] Accordingly, I make the following order:

1. The Agreement of Sale concluded on 16 November 2012 between the applicants is valid and enforceable.
2. The first, second, third and fourth respondents are interdicted from transferring the undivided half share of Erf 5160 Ibhayi acquired by

the second and third applicants in their capacities as Trustees of the Pepi Silinga Development Consulting Trust.

3. The first respondent is ordered to deliver to the second and third applicants the VA copy of the title deed herein.
4. The first, second, third and fourth respondents are ordered to pay the costs of the second and third applicants, jointly and severally.

E REVELAS
JUDGE OF THE HIGH COURT

Counsel for the Applicants:

Adv A Beyleveld SC
Adv I Bands
Port Elizabeth

Instructed by:

Fredericks Incorporated
Port Elizabeth

Counsel for the Respondents:

Adv Nobatana
Port Elizabeth

Instructed by:

Noble Sikwela Attorneys
Port Elizabeth

Date Heard:

17 October 2013

Date Delivered:

18 October 2013