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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH**

CASE NO: 2189/2019

Date Heard: 22 August 2019

Date Delivered: 12 November 2019

In the matter between:

**YSA MANUFACTURING AND INDUSTRY
(PTY) LIMITED REGISTRATION NO
2018/528767/07**

APPLICANT

and

**MAWETHU PLANT LIMITED
REGISTRATION NO 2004/003601/07**

RESPONDENT

JUDGMENT

JAJI J:

[1] This is an opposed application for an interlocutory interdict, interdicting the respondent from transferring, selling, purporting to sell, encumbering or alienating Erf 791 Swartkops in the Nelson Mandela Bay Municipality, Division of Port Elizabeth,

Province of the Eastern Cape, in extent 2216 square metres held by deed of transfer number T700[...] (the property) pending the outcome of the main application.

[2] The applicant contended that should the transfer into the name of the new buyer be effected, then the applicant's relief sought in the main application and in the interdict as it currently reads would become moot and the applicant would suffer serious prejudice and irreparable harm.

[3] The respondent opposed the application for interdict on the same basis as the main application for rectification. The respondent submitted that to do otherwise would eventuate in the application being argued and adjudicated twice on the same papers involving the same issues.

[4] The applicant filed a replying affidavit only on one aspect being the interdict which was ready for hearing on an urgent basis. In its heads of argument, applicant averred that the balance of convenience favours the status *a quo* to be maintained pending the finalisation of the main application. It submitted that there was no other satisfactory remedy available to the applicant, pending finalisation of the main application. The applicant argued that it has made out a case for the relief sought.

[5] As stated above, the respondent concentrated mainly in its argument on the main application. It made submissions on issues to be dealt with at the main application. For instance, issues like whether applicant was entitled to rectification as a remedy, waiver, common mistake by the parties, non-compliance with alienation of Land Act.

[6] It is common cause that:

- (i) The respondent was in a process of selling and transferring the property in dispute;
- (ii) The present application is for an interim interdict restraining the respondent from transferring or otherwise encumbering, alienating or disposing the abovementioned property, pending the outcome of the main application;
- (iii) It is common cause that the main application for rectification has been case managed already and parties were directed to:
 - Applicant is to file replying affidavit, if any, no later than 08 November 2019;
 - Parties to file their supplementary heads of argument, if any, by not later than Thursday, 14 November 2019;
 - Applicant must comply with practice note 15A by not later than 14 November 2019. (See DJP's directive)
- (iv) In the certificate of urgency, the applicant had suggested that the Duty Judge make a further directive that no transfer may take place prior to finalisation of the urgent application. Indeed, the Duty Judge Rugunanan AJ, recorded as stipulated in para 5 of the order dated 13 August 2019, that "the respondent's undertaking not to transfer the said property prior to an order being made in the urgent application is noted." I am informed by the case management Judge that the

respondent has agreed to extend its undertaking to the hearing of the main application.

- (v) In argument the respondent dealt with the urgent application, but mainly the submissions were concentrated to the main application. The respondent in its heads of argument contended that it had responded to both the main application and the application for interim relief, and as such the application should proceed on the basis of the final relief. It submitted that to do otherwise would eventuate in the application being argued and adjudicated twice in the same papers involving the same issues.
- (vi) The applicant only filed a replying affidavit on one aspect, being the urgent application and not in respect of the main application. The Duty Judge sanctioned only the hearing of the urgent application.

[7] Having regard to the common cause factors, clearly the court could not proceed and determine both applications because the matter that was placed for adjudication before this court was the application for interim relief only. The respondent's argument referred to above loses sight of the fact that what was placed before this court was the application for interlocutory relief, where the question is whether the applicant has established a *prima facie* right to the relief claimed as opposed to a clear right. The parties have received, *albeit* after the fact directives as to how to proceed forward in the main application. In the premises, the applicant was correct to only reply to issues relevant to the urgent application.

[8] The question is then whether this court should, in the exercise of its discretion, grant the interim relief claimed (***Camps Bay Residents Ratepayers Association and Others v Augoustides and Others*** 2009 (6) SA 190 (WCC) at 196A-B). The following factors are considered in this regard:

- (i) Having regard to the undertaking given, the proximity of the hearing of the main application (November 2019), the case management directive issued in respect thereof, the grant or refusal of the interdict would clearly not affect the outcome of the main application.
- (ii) Main application is ripe and ready for hearing;
- (iii) The date for hearing is November and it has already been case managed and directives issued;
- (iv) The directive by Rugunana AJ informed the office of the Deeds Office, the prospective buyer and the respondents of the present application; should the respondent alienate the property during litigation whilst the main application has not been heard, the applicant would not be without remedy, in any event, all interested parties are aware of the litigation and would proceed with the sale at their own peril;
- (v) The applicant does not stand to suffer any prejudice if the interim relief is not granted.

[9] I, therefore hold a view that it would not be necessary and proper to grant an interlocutory interdict herein in light of the abovementioned circumstances.

[10] Accordingly, I make no order with the costs of the hearing being costs in the main application.

N P JAJI
JUDGE OF THE HIGH COURT

Appearances

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