

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

CASE NO: 2022-044118

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED: No

DATE: 05/01/2024

SIGNATURE

In the matter between:

ANNA MARIE WESSELS

Plaintiff / Applicant

and

MARIE CORNELIA ROUX

Defendant /Respondent

JUDGMENT

YACOOB J:

1. Ms Wessels and Ms Roux are former romantic partners, who purchased a home together in 2014. Ms Wessels left the home when the relationship ended. Ms Wessels has instituted action proceedings for the termination of their co-ownership of the property. She has instituted this application to enable her to exercise her rights as co-owner. She seeks an account reflecting the income and expenditure related to the property and access to the property.
2. Ms Roux opposes the application on the basis that the access Ms Wessels has abandoned the property and her obligations towards it, and that she is co-owner in name only. As a result, it is contended, Ms Wessels has no right to access or

to accounts. She also contends that giving Ms Wessels unfettered access to the property would be a gross invasion of her privacy.

3. At the hearing it was contended that, in any event, the access sought by Ms Wessels is unlimited and far ranging, and not appropriate for an owner seeking access to someone else's home.
4. Ms Roux also contends that the proper time for the statement and debatement of account to be dealt with is in the action proceedings, and not in a separate application. However she provides much of the information sought in the answering affidavit.
5. In the notice of motion and founding affidavit, Ms Wessels sought a full set of keys and remotes for the property, and to be afforded access to the property with an advisor, but without setting out any limits to how and when that access would be limited.
6. The papers are full of allegations dealing with issues relevant to the breakdown of the relationship and the way the parties have dealt with each other, rather than what they may be entitled to at this point and in the context of the pending action. I therefore do not deal with all of that material as it is, in my view, irrelevant at this stage.
7. I also do not deal with the various allegations by the parties regarding who paid what when. That, again, is not the subject of the relief before me and will be determined at the appropriate time when ownership and the value thereof is determined.
8. I am satisfied that there is no merit in Ms Roux's claims of abandonment, and that Ms Wessels remains a co-owner until the co-ownership is terminated.
9. Ms Wessels has cast the relief sought as a final, mandatory interdict. She claims that she has a clear right as owner to access the property, that Ms Roux is interfering with her right, and that there is no other remedy. Where there is a clear

right it is not necessary to allege that there is an apprehension of irreparable harm.

10. Ms Roux complains that the application is cast as a mandatory interdict but is in fact a restitutionary interdict. This does not assist her. It does not matter how Ms Wessels describes the relief sought. What matters is the substance of what is sought, and whether what is pleaded supports that relief.
11. I am not satisfied that Ms Wessels has demonstrated that she has a clear right to access to the property as set out in the notice of motion. She is a co-owner but her rights as co-owner are limited by the rights of Ms Roux, who is occupying the property also as co-owner. Ms Roux is entitled to privacy in her own home.
12. That said, as co-owner, Ms Wessels is entitled to reasonable access to the property. At the hearing counsel for Ms Roux conceded as much, subject to the access being limited by hours, and proper notice.
13. As far as the statement and debatement of account is concerned, Ms Wessels relies on the right of a co-owner to receive an account from the other co-owner, to be accounted to for her share of the income from a property, and to share in any profits generated by the property. She contends that Ms Roux has derived rental income from the property and that therefore she is entitled to an account of the income.
14. Ms Roux, while denying that Ms Wessels is entitled to any accounting, also denies that she has derived more than a sporadic income from the property, and that there has been any profit generated.
15. As pointed out above, it was contended on Ms Roux's behalf at the hearing that, in any case, the proper time for the statement and debatement is when the co-ownership is terminated. The authorities relied on for this contention are the same as those relied on by Ms Wessels to submit that she is entitled to an accounting immediately.

16. The authorities support the contention that Ms Wessels is entitled to receive an account, as co-owner. However, she is also entitled to that account as part of the proceedings for termination of the co-ownership. Her bringing of this application to obtain that relief results in a multiplicity of actions for which no discernable reason exists. For that reason, I am not satisfied that Ms Wessels is entitled to an order in her favour at this stage.

17. As far as costs are concerned, I am satisfied that Ms Wessels is achieving less than she asked for from Ms Roux in correspondence before she instituted proceedings, and less than she asked for in the notice of motion. On the other hand, Ms Roux has raised a number of defences with absolutely no basis in fact and little in law. I therefore consider it appropriate that each party pay her own costs, and make no costs order.

18. For these reasons I make the following order:

1. The respondent is to provide the applicant with a full set of keys and remotes to the co-ownen property within fifteen days of this order.
2. The applicant may not make use of the keys and remotes to the property, or permit any other person to do so, except as provided for in this order, for as long as the co-ownership of the property exists.
3. The applicant may access the property, together with her attorney or other advisor, no more than once every two months, and only after making arrangements with the respondent through her attorney for that access.
4. The respondent shall not be obstructive in making arrangements for the applicant to access the property.

S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

For the appellant:	A Ashton
Instructed by:	Myburgh Attorneys
For the respondent:	K Howard
Instructed by:	Jennifer Scholtz Attorney
Date of hearing:	05 October 2023
Date of judgment:	05 January 2024