



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/ NO
Circulate to Magistrates:	YES/NO

Case No.:3864/2018

In the application of:

CAROLL JESSIE KATHLEEN LOTZ

APPLICANT

and

JOHN DOUGLAS JANSEN KNIPE

1ST RESPONDENT

ANDRE BAZZETT JANSEN KNIPE

2ND RESPONDENT

THE SHERIFF BLOEMFONTEIN WEST

3RD RESPONDENT

BONGANI TRADING CC

4TH RESPONDENT

ROBITYPE CC

5TH RESPONDENT

CORAM:

I VAN RHYN, AJ

JUDGMENT BY:

I VAN RHYN, AJ

HEARD ON:

3 MAY 2019

DELIVERED ON:

1 AUGUST 2019

INTRODUCTION.

- [1] This is an application for declaratory and interdictory relief relating to the sale of the first and second respondents' shares in two companies known as Kameelhoek and Schaapplaats (both in liquidation) ("two companies in liquidation"). Subsequent to the delivery of the first and second respondents' opposing affidavit an amendment was sought of the notice of motion. The application was not opposed.
- [2] The application is opposed by the first and second respondents who also launched a counter application for stay of execution steps by the applicant, in terms of the provisions of Rule 45A of the Rules of Court.
- [3] On the date of hearing, the court firstly disposed of three condonation applications. These applications were all condoned in the following way: the late filing of the applicants replying affidavit and her opposing affidavit to the counter application was condoned. The late filing of the first and second respondents' replying affidavit was condoned and lastly the late filing of the Heads of Argument filed on behalf of the applicant was condoned.
- [4] The amended Notice of Motion reads as follows:
1. "Declaring any sales transaction or cession of the First and Second Respondents' shares in the companies Kameelhoek (Pty) Ltd and Schaapplaats 978 (Pty) Ltd to be void in terms of Section 341 of the Companies Act, 61 of 1973.
 2. Prohibiting and restraining the First and Second Respondents from selling or ceding their shares in the two companies Kameelhoek registration number 19879/000200/07 and Schaapplaats, registration number 1979/004048/07.
 3. Prohibiting and restraining the First and Second Respondents from unlawfully interfering with the execution measures to sell or cede their shares of the companies in liquidation of the respondents.
 4. Authorising and instructing the Sheriff to proceed with the sale in execution of the First and Second Respondents shares in the

companies known as Kameelhoek registration number 1979/000200/07 and Schaaplaats, registration number 1979/004048/07.

5. The First, Second, Fourth and Fifth respondents and their attorney and counsel *de bonis propriis*, be ordered to pay cost of the application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved."

[5] The first and second respondents requested the following orders in terms of their counter application:

"1. The execution of cost orders issued against the First and Second Respondents by this court under case numbers 481/2014 and 5081/2014 is suspended in terms of Rule 45A of the Uniform Rules of Court.

2. The suspension of the execution ordered in prayer 1 is to operate on the following terms:

2.1 It is to operate until such time as the liquidation process is finally concluded for the companies known as Kameelhoek (Pty) Ltd (in liquidation) and Schaaplaats 978 (Pty) Ltd (in liquidation), and the First and Second Respondents are entitled to be paid the amounts from the process due to them;

2.2 The first and Second Respondents are ordered to instruct the final Liquidators of the companies mentioned above, to effect payment of the cost orders in favour of the applicant in full from the proceeds due to the First and Second Respondents from the final liquidation of the companies mentioned above;

2.3 The First and Second Respondents are ordered to provide a copy of this instruction to the applicant's attorney, within 7 days after the granting of this order;

2.4 Leave is given to all parties to approach the court on the same papers, duly amplified, for an order uplifting the suspension of execution order or its amendment.

3. The applicant is ordered to pay the cost of this application, only in the event of her opposing”

[6] No order as to costs is sought against the third respondent, the Sheriff and no opposition to the application by the applicant was filed by the third, fourth and fifth respondents. Adv. D A Price appeared on behalf of the applicant and Adv. F Janse van Rensburg appeared on behalf of the first and second respondents. There was no appearance on behalf of the other respondents. To avoid confusion I shall throughout refer to the parties as cited in the application filed by the applicant.

BACKGROUND.

[7] Appended to the papers is a copy of Daffue J's judgment in application 4606/2016, “the Triegaardt application” where he referred to an observation he made on 23 May 2013 in the matter of **Knipe and Others v Kameelhoek (Pty) Ltd and Another**¹: *“These proceedings, formidable as they are, are but a skirmish in a full blown campaign – a family war- being fought on several fronts”*. He then remarks that the family war did not cease after his remark made on 23 May 2013. Now, in July 2019 the battle still continues. This application arises from ongoing litigation between the Knipe siblings, which is not yet finalised.

[8] The applicant was granted cost orders against the first and second respondents and Jackie Vigne, jointly and severally under case number 5081/2014 and 4817/2014. The bills of costs were taxed. The first and second respondents’ and their sister, Jackie Vigne’s shares in the two companies in liquidation were attached during January 2018. A sale in execution was arranged to be held on 10 April 2018. On the day prior to the sale of the attached shares, an agreement was reached pertaining to certain issues as set out in a letter from Mr Kobus Senekal, the legal representative of the applicant and a reply from the first and second respondent’s then attorney, Mr Marius van Rensburg. It was agreed that the auction would be postponed *sine*

¹ 2014 (1) SA 52 (FB) at para [7].

die pending an agreement between the parties regarding all the outstanding issues.

- [9] During May 2018, subsequent to a demand from Mr Senekal for payment of an amount of R9 million plus VAT for his fees, failing which he would proceed with execution steps against the respondents, the settlement agreement was aborted. A second sale in execution was arranged to be held on the 18th July 2018. On behalf of the applicant it is contended that, in a designed attempt to frustrate the sale in execution, the first and second respondents and Jackie Vigne *“acting in concert, fraudulently colluded by advising the Sheriff in writing and/or causing the Sheriff to be advised, on the afternoon of the 17th of July 2018, that they were no longer the owners of the shares in the two companies in liquidation and that they have sold the shares to ‘third parties’.”*
- [10] The “third parties” are, in the alleged sale of the first respondent’s shares, the fourth respondent, i.e. Bongata Trading CC and in respect of the second respondent’s shares, the fifth respondent i.e. Robitype CC. The applicant argues that the first respondent was a sole member of the fourth respondent until as recent as July 2017 while the purchaser of the second respondent’s shares is the fifth respondent of which his wife (his erstwhile girlfriend) is the sole member. No detail regarding the date of the sale of these shares or at what value the shares were allegedly sold were provided.
- [11] The Sheriff did not proceed with the sale in execution, understandably so. After the sale in execution was cancelled, the first respondent, on 24 July 2018 and second respondent on 25 July 2018, provided written instructions to the liquidators of the companies in liquidation for the issue of undertakings that the costs orders against them may be paid to the applicant from the netto dividends of the proceeds of their shares at the conclusion of the winding up process of the two companies.
- [12] It is argued that the conduct of the first and second respondents was fraudulent and constituted a criminal offence as contemplated in section 46(b) of the Superior Court Act 10 of 2013. Furthermore it is contended that the respective sales of the shares were void because same took place in

contravention of the provisions of section 341(1) of the Companies Act 61 of 1973.

- [13] In their opposing affidavit the first and second respondents state that they both ceded, as security, their shares in the companies to the entities which caused the cancellation of the sale in execution scheduled to take place on 17 July 2018. The fourth and fifth respondents stood in for the legal costs of the first and second respondents in the ceaseless litigation between them, the applicant, her attorney and the provisional liquidators of the companies. It is contended that the cession of their shares took place in 2017 and the fourth and fifth respondents were incorrect in their assertion to the Sheriff that they are the owners of the shares. The first and second respondents therefore argue that there is no need or any reason for the orders applied for by the applicant. They furthermore argued that the involvement of Mr Senekal is central to the long history of litigation between the parties. It is alleged that Mr Senekal, at certain periods of time during the past 11 years, acted on behalf of the second respondent and his brother, Peter Knipe (also a party to the saga of litigation, though not a party in the present application) against his current client, the applicant, and presently against the second respondent. During the same time Mr Senekal “factually” acted on behalf of the provisional liquidators of the two companies and therefore his involvement is under severe objection from the first and second respondents as well as Jackie Vigne. In the judgment by Daffue J, “the Triegaardt application”, certain remarks were made pertaining to the involvement of Mr Senekal. I find it highly questionable that Mr Senekal continue to act as the legal representative of the applicant under circumstances where he previously acted as the legal representative of some of the opposing parties.
- [14] The first and second respondents as well as Jackie Vigne, on several occasions questioned Mr Senekal’s mandate to act on behalf of the provisional liquidators and during 2015, when Mr Senekal submitted his attorney and client bill of costs to the liquidators, the Taxing Master required proof of the attorney and client fees agreement the liquidators relied upon. In opposing the application and in support of their counter application the hostile relationship between the Knipe siblings and Mr Senekal were elaborated

upon. With reference to the “Trichardt Family Trust application”, the claim against the estates of the two companies in liquidation by Mr Loftus Viljoen, the provisional sequestration application of the second respondent’s estate and the relationship between the liquidators and Mr Senekal, the first and second respondents contend that Mr Senekal’s continued involvement and his claim of between R21 million and R9 million for his costs against the estates of the two companies in liquidation, serves as the main reason for the delay in the finalization of the liquidation process.

- [15] In opposition to the applicant’s application it is contended by the first and second respondents (as well as Jackie Vigne) that the settlement proposals by Mr Senekal were accepted on 10 April 2018 to prevent their shares being auctioned off the following day. However, long before the deadline for the submission of the final liquidation and distribution account on 29 June 2018, Mr Senekal in a letter dated 15 May 2018, the “repudiation letter,” demanded payment of his costs in contravention of the settlement agreement which included the provision that no further execution steps will be taken against the first and second respondents and Jackie Vigne. It is argued by the first and second respondents that the applicant does not have any risk that her costs orders will not be paid in full from the proceeds of the first and second respondents’ shares in the two companies. They contend that Mr Senekal was the author of the proposal that no further execution steps or litigation will be embarked upon by the applicant on the condition that “the whole matter” is resolved, the final liquidation and distribution account is confirmed by 29 June 2018 and on condition that any costs orders which have been obtained until then, would be paid out of the dividends of the shareholders.
- [16] The applicant argues that the first and second respondents have misled the court regarding the estimated surplus in the estates of the two companies which, in their assessment, ought to be approximately R25 million, leaving each shareholder with approximately R5 million. On 7 September 2018 the final liquidators sent a report/update with an updated liquidation and distribution account drafted on the basis that an all-in settlement was reached. From this liquidation and distribution account the best possible scenario for the 5 shareholders is that they will each receive approximately R 2, 2 million. On

behalf of the applicant it is therefore argued that the final amount will in all likelihood be less than this estimation. Even on the basis that first and second respondent as well as Jackie Vigne receive R2, 2 million each, their dividends will be insufficient to satisfy all the costs orders in her favour and those of the liquidators. The applicant provides a calculated estimation of her taxed and soon to be taxed costs as well as further cost orders obtained in the Northern Cape High Court, some in favour of the liquidators and others only pertaining to some of the respondents, but in total amounted to R 9 325 810.65. Therefore, with the finalization of the estates of the two companies in liquidation still ongoing and several aspects pending she, as a judgment creditor should not have to wait indefinitely with no guarantee of receiving payment of her taxed costs.

THE LEGAL PRINCIPLES: APPLICABLE TO THE APPLICANT'S APPLICATION.

- [17] The nature of the remedy is that of a final and permanent interdict. In prayer 1 of the notice of motion applicant seeks declaratory relief and in terms of prayers 2 and 3, a prohibitory interdict is sought. In prayer 4 performance of certain orders by the Sheriff, sanctioned by the court, is required. Interdict procedure is a remedy of a summary and extra-ordinary nature, allowed in cases where a person requires protection against an unlawful interference or threatened interference with his or her rights. It is not a remedy for past invasion of rights, but is concerned with the present or the future.²
- [18] The requisites for the grant of a final interdict have been authoritatively decided in **Setlogelo v Setlogelo**³. The three requisites for a final interdict, all of which must be alleged and proved, are:
- i. a clear right on the part of the applicant;
 - ii. an injury actually committed or reasonably apprehended;
 - iii. the absence of any other satisfactory remedy available to the applicant.

² LAWSA, VOL 11 [390].

³ 1914 AD 221, at 227.

- [19] The applicant contends that the disposition of the first and second respondents' shares, if any, took place in contravention of the provisions of Section 341 (1) of the Companies Act 61 of 1973 which provides as follows:

"341 Dispositions and share transfers after winding-up void

(1) Every transfer of shares of a company being wound up or alteration in the status of its members effected after the commencement of the winding-up without the sanction of the liquidator, shall be void."

- [20] A disposition after the commencement of winding-up proceedings, is void and not merely voidable. Although section 341 does not make provision for the setting aside of or for the declaring void of the disposition, it would follow as a necessary consequence that in the absence of an order validating the disposition, the disposition would be void. The applicant was awarded costs in two applications (case number 5081/2014 and case number 481/2014) which form the subject of this application. The applicant intends to execute for payment of the taxed costs, hence the application.
- [21] In opposition, the second respondent, apart from blaming Mr Senekal for orchestrating a provisional sequestration application, did not provide information pertaining to his financial position and his ability to meet the costs orders made in favour of the applicant. Neither the second respondent nor the first respondent presented this court with any financial statements or information regarding immovable property or the value of movable assets. The applicant appended copies of returns of warrant of execution served upon the first and second respondents in March 2016. In these returns from the Sheriff it were stated that both respondents indicated that it was impossible for them to pay the amount due, or any amount, and that both first and second respondents indicated that they own no property or assets for attachment in the jurisdiction of the Sheriff of Bloemfontein West. Both the first and second respondents indicated to the Sheriff that they do own substantial assets in the Kimberley district. The Sheriff issued *nulla bona* returns regarding assets in the district of Bloemfontein. During June 2017 the Sheriff followed the same procedure and again issued *nulla bona* returns regarding assets in the

Bloemfontein area. Strangely, in respect of the first respondent's return, dated 14 June 2017, the following is recorded by the Sheriff: *"Applicant (Mr JDJ Knipe) informed me that he is believably not in possession of any assets in Bloemfontein. The applicant informed me that possible assets could believably be found at the farm Kameelhoek in Kimberley"*

- [22] A court should adjudicate factual disputes in application procedure having regard to the well-known **Plascon-Evans Paints dicta**, approved and considered in depth in **Wightman t/a JW Construction v Headfour (Pty) Ltd and Another**⁴ as follows: *"[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E-635C. See also the analysis by Davis J in Ripoll-Dausa v Middleton NO 2005 (3) SA 141 (C) at 151A-153C with which I respectfully agree."*

[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind

⁴ 2008 (3) SA 371 (SCA) at [12] –[13].

when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.”

- [23] The first and second respondents do not dispute their liability to pay the taxed costs of the applicant. They contend that the applicant is guaranteed the satisfaction of payment once they receive the value of their shares in the two companies in liquidation. As confirmation of their intention to fulfil their obligation, they instructed the liquidators to make direct payment to the applicant of the amounts owing on these costs orders as soon as the liquidation process is finalized. Their objection to the execution process is that the execution and sale of their shares will be for an ulterior motive based on the averment that Mr Senekal, on more than one occasion, threatened to purchase their shares for an amount next to nothing where after he will pursue the sequestration of their estates. The first and second respondents rely on an e-mail from Mr Senekal, a copy of which is appended to the papers as well as a verbal threat in this regard, made during a telephonic conversation with their former attorney, Mr Marius Van Rensburg.

THE LEGAL PRINCIPLES: THE RESPONDENTS COUNTER APPLICATION.

- [24] The first and second respondents contend that it will be just and equitable to grant an order in terms of the respondents’ counter application to prevent the applicant from enforcing the costs orders pending the conclusion of the liquidation process of the estates of Kameelhoek and Schaapplaats and that an injustice will be done in the event of the shares being sold for an amount far less than what they are worth. The first and second respondents therefore

request a stay of the execution of the costs orders in terms of the provisions of Rule 45A of the Rules of Court.

[25] Rule 45A provides as follows:

“The court may suspend the execution of any order for such period as it may deem fit.”

In **Dumah v Klerksdorp Town Council**⁵ it was held that good cause to stay an execution would be any fact or circumstance that would make it just or equitable as between the parties that execution should be stayed. Price J furthermore held that it might be equitable if it were uncertain in whose favour there might be an ultimate balance owing. The court must consider what would be just and equitable as between the parties.

[26] In *Erasmus Superior Court Practice*⁶, with reference to a number of decided cases, the following is stated with regard to the application of the provisions of Rule 45 A:

“As a general rule the court will grant a stay of execution where real and substantial injustice requires such a stay or, put otherwise, where injustice will otherwise be done. Thus the court will grant a stay of execution where the underlying causa of the judgment debt is being disputed or no longer exists, or when an attempt is made to use for ulterior purposes the machinery relating to the levying of execution. It has been held that, in particular circumstances, the court could, in the determination of the factors to be taken into account in the exercise of its discretion under this rule, borrow from the requirements for the granting of an interim interdict, namely that the applicant must show (a) that the right which is the subject of the main action and which he or she seeks to protect by reason of the interim relief is only prima facie established though open to some doubt; (b) that if the right is only prima facie established, there is a well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and

⁵ 1951(4) SA 519 (T) at 522.

⁶ Vol II at B1-330 – B1-330A.

he or she ultimately succeeds in the establishing of his or her right; (c) that the balance of convenience favours the granting of interim relief; (d) that the applicant has no other satisfactory remedy.

[27] The first and second respondent did not proffer that the application to suspend payment of the taxed costs to the applicant is based on a pending review of the applicant's costs orders or pending any appeal of any of a vast number of applications and interlocutory applications already heard in the ongoing litigation between the Knipe siblings, the liquidators or the Master. In **Cooper v Feinstein**⁷ Ndita AJ (as she then was) stated as follows: *"It appears from what the learned authors discuss that the circumstances in which the courts will grant or refuse the application for suspension of writ of execution vary from case to case depending on the circumstances of each case. There is therefore no hard and fast rule."* In **Gois t/a Shakespear's Pub v Van Zyl and Others**⁸ the court held that the stay of execution will be granted where the underlying causa is the subject matter of an ongoing dispute between the parties. It was further held that an application for review qualifies as an attack on the underlying causa.

[28] I was also referred to the judgment in **Bestbier v Jackson and another**⁹. In that case the applicant (plaintiff) was ordered to pay the costs of a postponement of the trial. The respondents (defendants) taxed their bill of costs and their attorney instructed the Sheriff to attach the applicant's interest in his cause of action against the respondents. The applicant obtained an order condoning his failure timeously to note a review of taxation. The applicant applied to stay the sale in execution pending the review of taxation. In his judgment Coetzee DJP said¹⁰: *"The suspicion which one has, and which is a very strong one, is that this is simply a further attempt to harass the applicant to the point of making it impossible for him to proceed with his cause of action. One gathers sufficient material for this inference from the mere fact that no other property of the applicant became the subject of the attachment,*

⁷ (112 9/02) [2005] ZAWCHC 28 (20 April 2005).

⁸ 2011 (1) SA 148 (LC).

⁹ 1986 (3) SA 482 WLD.

¹⁰ At 484G-H.

at a time when he was financially apparently illiquid, and that this particular cause of action, by special instructions, was then so attached.” The learned F Coetzee DJP furthermore held¹¹: *“It is perfectly obvious that justice requires that this review of taxation be proceeded with, or at least that the applicant be given an opportunity to proceed with it, and that, pending that, this rather harassing sale in execution of his very cause of action in that action, be stayed.*

EVALUATION OF APPLICATION FOR AN INTERDICT AND THE COUNTER APPLICATION.

- [29] Insofar as the applicant seeks a final interdict she has to prove an unlawful state of affairs and the right to secure a permanent cessation thereof. The first and second respondents deny any sale of their shares in the companies in liquidation, but they now, since they received the application for a permanent interdict to restrain them from selling or ceding their shares, state that they have ceded their shares *in securitatem debiti*. The first and second respondents however failed to provide such evidence or facts. They advanced no reason why they are not able to provide this court with the cession documents or confirmatory affidavits from the respective cessionaries, the fourth and fifth respondents.
- [30] It is the applicant’s case that she is entitled to payment of her taxed costs and that the first and second respondents are not entitled to postponement of their obligation to comply with the warrants of execution already issued. Whether the applicant has a clear right is a matter of substantive law. Whether that right is clear is a matter of evidence. In order therefore to establish a clear right the applicant has to prove on a balance of probabilities facts which in terms of substantive law establish the right relied upon.¹² I am convinced that the applicant has a clear right to obtain due payment of her costs orders. Furthermore the first and second respondents do not deny their responsibilities pertaining to the costs orders against them. The applicant has demonstrated an actual invasion of her right to proceed with execution

¹¹ At 485F.

¹² LAWSA para [397]

steps and the first and second respondents have unlawfully interfered with her right as such.

- [31] In terms of the provisions of Section 341 of the Companies Act, 61 of 1973 any disposition of their shares was void since it must have occurred, if at all, subsequent to the commencement of the winding up of the two companies in liquidation. The first and second respondents did not provide this court with any information pertaining to their allegations that they ceded their shares. I agree with the submission by Mr Price that; the timing of the new version that the shares were ceded and not sold; the relationship between the first and second respondents and the members of the fourth and fifth respondents; as well as the failure to provide convincing, or for that matter any confirmatory evidential material causes the version that the shares were ceded to the fourth and fifth respondents to be so far-fetched that it can safely be rejected.
- [32] The applicant has thus succeeded in convincing this court that an order prohibiting and restraining the first and second respondents from unlawfully interfering with the execution measures or to sell or cede their shares in the companies in liquidation, should be awarded. I was also informed that the Sheriff, since receiving the letters from the fourth and fifth respondents pertaining to their alleged ownership of the shares to be sold in execution, refrains from proceeding with a sale in execution without an order to this effect. Therefore I have been persuaded that an order in terms of prayer 4 of the Notice of Motion, authorising and instructing the Sheriff to proceed with the sale in execution of the first and second respondents' shares in the companies in liquidation, should be granted.
- [33] The first and second respondents did not elaborate upon their declarations made to the Sheriff that neither of them have any assets, movable or immovable apart from assets held in the Kameelhoek. Therefore the only information at hand regarding the financial position of the first and second respondents remains the information pertaining to the assets and liabilities of the two companies in liquidation¹³. From the affidavit filed by the liquidators, it is evident that further assets and liabilities, further interests, recovery of further

¹³ Road Accident Fund v Strydom 2001 (1) SA 292 CPD,

possible debtors, outstanding legal costs, capital gains tax, income tax and the costs of the enquiry will be dealt with in a further liquidation and distribution account. The applicant is concerned that the amount available for distribution between the siblings is dwindling. The first and second respondent have expressed the same concern.

- [34] The first and second respondents' application to stay execution steps pending the finalization of the liquidation process does not concern the *causa* of the applicant's costs orders. The court in **Firm Mortgage solutions (Pty) Ltd v Absa Bank Ltd**¹⁴ had the opportunity to consider the ambit, if any, of the discretion the court has to order the stay or suspension of the execution in circumstances where there was no application for the rescission of judgment or review of taxation. With reference to Rule 45A the court held as follows in answering the question whether it is possible that Rule 45A envisages the exercise of an equitable jurisdiction unhinged by any legal causa but simply predicated on the equities of a case: *"The answer is to be found in Rule 45A of the Uniform Rules of Court and. In turn this necessitates an answer to a further question as to whether the particular Rule is applicable in a case such as the present. In Gois v Van Zyl and Others 2011(1) SA 148 (LC) Waglay, J (as he then was) set out the basic principles for a grant of a stay in execution which, as Erasmus in Superior Court Practice writes, is applicable to Rule 45A. These principles were summarised by the learned Judge, at para 37 as follows: "(a) A court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result. (b) The court will be guided by considering the factors usually applicable to interim interdicts except where the applicant is not asserting a right but attempting to avert injustice. (c) The court must be satisfied that:*
- (i) The applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent(s);*
 - (ii) irreparable harm will result if execution is not stayed and the*

¹⁴ 2014 (1) SA 168 (WCC).

applicant ultimately succeeds in establishing a clear right.

(d) Irreparable harm will invariably result if there is a possibility that the underlying causa may ultimately be removed i.e. where the underlying causa is the subject matter of an on-going dispute between the parties.

(e) The court is not concerned with the merits of the underlying dispute - the sole enquiry is simply whether the causa is in dispute.”

To the extent that there is any uncertainty as to the meaning of these dicta, further clarity is to be found in the judgment where, the learned Judge examines the facts of the case and, in particular, whether a stay of execution should be granted, pending the outcome of a rescission application. Waglay J then said: ‘The applicant will furthermore suffer irreparable harm if the execution is not stayed and the rescission application is successful.’ It is clear that what was intended in this case was that, where the causa for the execution is a judgment and the judgment is placed in dispute because an application for rescission has been brought, grounds may well exist for the exercise of a favourable discretion by a court.”

[35] In the present case, there is no such application. What the first and second respondents offer as justification for an exercise of a court’s discretion in their favour is merely to afford them more time. The respondents have not shown that they will suffer irreparable harm if their shares are sold per execution and payment is afforded to the applicant of her costs orders. They contend that they will suffer irreparable harm if Mr. Senekal purchases the shares at an amount far less than what the shares are worth. The applicant has judgments in her favour and is entitled to execute. There is no indication that the liquidation process of the two companies will be finalized soon. It may take a few more years. The process has been dragging on for 7 years. The applicant would suffer very substantial prejudice if execution was stayed.

[36] While I have a discretion to suspend execution, in the totality of the circumstances, I am not of the view that execution would result in an injustice. In determination of what is just and equitable between the parties, the court is obliged to have regard to the rights of all the parties concerned. In all the

circumstances, the counter-application falls to be dismissed with costs. On behalf of the applicant it was argued that the first and second respondent's attorney and counsel acted unprofessionally and improperly and that a special cost order is sought in expressing the court's disapproval of the conduct of the legal representatives. The grounds for the special costs order is the extremely insulting answering affidavit in which fraudulent and improper conduct was imputed to Mr Senekal.

[37] In light of the numerous applications and counter applications in the "Knipe saga", containing several accusations from both sides of fraud, dishonest conduct and other defamatory allegations, this court is not prepared to adjudicate upon the truthfulness, or not, of these accusations at this stage.

[38] For the above reasons, I make the following order:

1. Any sales transaction or cession of the first and second respondents' shares in the companies Kameelhoek (Pty) Ltd and Schaapplaats 978 (Pty) Ltd (in liquidation) are declared void in terms of Section 341 of the Companies Act, 61 of 1973.
2. The first and second respondents are prohibited and restrained from selling or ceding their shares in the companies Kameelhoek registration number 19879/000200/07 and Schaapplaats, registration number 1979/004048/07 (in liquidation).
3. The first and second respondents are prohibited and restrained from unlawfully interfering with the execution measures to sell or cede their shares in the companies Kameelhoek registration number 19879/000200/07 and Schaapplaats, registration number 1979/004048/07 (in liquidation).
4. The Sheriff is authorised and instructed to proceed with the sale in execution of the first and second respondents' shares in the companies known as Kameelhoek registration number 1979/000200/07 and Schaapplaats, registration number 1979/004048/07 (in liquidation).

5. The first and second respondents are ordered to pay cost of the application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved.
6. The counter application is dismissed with costs.

I VAN RHYN AJ

On behalf of the Applicant:
Instructed by:

ADV. D A PRICE SC
F J SENEKAL INC.

On behalf of the First & Second Respondents
Instructed by:

ADV. F. J. VAN RENSBURG
WILLERS ATTORNEYS

On behalf of the Third, fourth and fifth respondents:

No appearance

