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

Case number: 786/2017

In the matter between:

RUDOLF JOHANNES HARRIS

1st Applicant

[Identity number: [5...]]

RACHEL SOPHIA ELIZABETH HARRIS

2nd Applicant

[Identity number: [5...]]

and

ZANDER CHRIS BURGER N.O

1st Defendant

[BLUE GINGER TRUST - IT 276/2009]

THE MASTER OF THE HIGH COURT

2nd Defendant

HEARD ON: 11 MAY 2017

JUDGMENT BY: RAMPAL, J

REASONS GIVEN: 18 MAY 2017

[1] The matter came to court by way of motion proceedings. The applicant sought an order whereby the two agreements concluded by the parties were declared null and void. The alternative relief sought was cancellation of those agreements. The application was, in a sense, unopposed - hence it was on

the unopposed roll of the general motion court.

[2] The applicants sold their residential property to the first respondent who in turn sold his to the applicants. The exchange sales were concluded prior to the institution of the current restorative application on 15 February 2017.

[3] The file history of the matter shows:

3.1 that the application was issued on 15 February 2017;

3.2 that it was served on the first respondent on or before 2 March 2017;

3.3 that the first respondent served and filed notice of his intention to oppose the application on 2 March 2017;

3.4 that the applicants enrolled the matter on 23 April 2017 for hearing on 11 May 2017;

3.5 that the second respondent's report pertaining to Blue Ginger Trust IT 276/2009 was filed on 5 May 2017;

3.6 that the first respondent's attorney asked for a postponement on 10 May 2017 and

3.7 that the matter was duly listed on the unopposed roll of the general motion court of 11 May 2017 as item number 42.

[4] Before me on Thursday 11 May 2017 appeared Mr Grewar for the applicants and Mr Olivier for the first respondent. The two legal representatives could not agree on any of the proposals contained in the first respondents' letter dated 10 May 2017.

[5] Mr Olivier urged me to give the first respondent an opportunity to be heard. He argued that unless the matter was postponed as the first

respondent requested, the first respondent would be effectively denied access to justice. Mr Grewar argued that the first respondent had been dragging his feet for far too long and that the applicants were very frustrated.

[6] In the founding affidavit, Mr Rudolf Johannes Harris, the co-seller of the Lauw Wepener property, "anx hh7", and the simultaneous co-purchaser of the Groenvlei property, "anx hh8", averred:

"8.6 Burger het op die 9 Desember 2014 twee koopkontrakte getekent in sy hoedanigheid as trustee, ten opsigte van **Louw Wepener** en **Groenvlei**, terwyl die trustakte op daardie stadium bepaal het dag hy nie gelyktydig as 'n trustee en begunstigde kan handel nie. (my emphasis)

8.7 'n Afskrif van die ooreenkoms van **Louw Wepener** word hierby aangeheg gemerk aanhangsel "**HH7**".

8.8 'n Afskrif van die ooreenkoms van **Groenvlei** word hierby aangeheg gemerk aanhangsel "**HHS**".

8.9 Burger was op daardie datum beide die alleen-trustee en 'n begunstigde van die trust en bygevolg is die transaksie nietig weens sy onbevoegdheid om te handel en die trust te bind. It

[7] On the strength of those material averments, it appeared to me that the first respondent was not legally competent to alienate the trust property known as Groenvlei seeing that he was both the trustee and beneficiary of the Blue Ginger Trust - vide "anx hh211 read with "anx hh311 to "anx hh6.

[8] The first respondent signalled his intention to oppose the application some 69 calendar days before the date on which the matter was heard. The

applicants then waited and waited for the first respondent's answering affidavit. They waited in vain. On 23 April 2017, some 52 calendar days after the filing of the first respondent's notice, the applicants served a notice of setdown. Again there was no reaction from him. Hardly a day before the hearing the first respondent wrote to ask for a postponement.

[9] In my view the request for a postponement was not made in good faith. It was yet another ploy to delay the matter. All these indicated to me that the first respondent had no seriously genuine intention to oppose the application. He displayed complete disregard for the rules of procedure. This sort of a litigant's remissness undermines the norms and standards designed to enhance the efficiency of the civil dispute resolution by way of public adjudicative system.

[10] These then are the reasons for the order I made. I suppose they explain the order well. In view of the aforesaid considerations, I refused to have the application postponed. The first respondent did not act like a serious litigant with a *bona fide* defence. He only has himself to blame for the refusal. The refusal is the harvest of his neglect.

[11] I note that the second leg of the order does not accurately reflect my intention. I probably not pronounce the date on which the parties have to restore performances. The omission was an inadvertent oversight. I had a specific date scribbled in my bench book. In determining an appropriate date, I took into account the reasonable possibility that the applicants' residential property, Lauw Wepener, might currently be still occupied by innocent and

lawful occupiers. I would, therefore, revisit the previous order by inserting a date in paragraph 2 thereof.

[12] In the circumstances, I hereby vary the previous order *mero motu* to read as follows:

12.1 The Lauw Wepener and Groenvlei agreements concluded by the parties in Bloemfontein on the 9 December 2014 are hereby nullified.

12.2 The effective date of restoration shall be Friday 30 June 2017.

12.3 The respondent pays the costs of the application.

MH RAMPAL, J

On behalf of applicants: Adv Grewar

Instructed by: Adrie Hechter Attorneys
Bloemfontein

On behalf of respondents: Adv Olivier

Instructed by: Symington & De Kok
Bloemfontein