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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

1.Reportable: No

2.Of Interest to Other Judges: No

3.Revised: No

10 September 2024

CASE NO: 063768/2023

In the matter between:

IMRAN DINAH N.O

(Id No: 8[...])

First Applicant

NOMVUYO YVONNE SERITI N.O

(Id No: 5[...])

Second Applicant

and

JOSHUA LASISI IGINLA

First Respondent

ZIMASA STELLA IGINLA

Second Respondent

**THE REGISTRAR OF DEEDS FOR PROVINCE OF
GAUTENG, PRETORIA**

Third Respondent

JUDGMENT

MASHABAAJ

[1] For ease of reference I will refer the parties according to their citation in the main application (interim interdict application). The first and second respondents (applicants in the application for leave to appeal) have brought an application for leave to appeal judgment handed down by this Court on 24 July 2024 wherein the rule nisi issued by the Honourable Justice Tshombe on 13 July 2023 Court confirmed.

[2] In a nutshell the respondents as their grounds for leave to appeal submitted that the Court and/or Presiding Judge: (a) committed a mistake of law in ignoring the fact that the property at issue had already been sold and was no longer subject to the interdict so confirmed; (b) did not properly consider whether the applicants actually met the requirements of an interdict; and (c) ignored the fact that the rule nisi should not have been issued against the respondents ex-parte, denying them the right to be heard.

[3] I do not deem it necessary to deal with all the grounds raised by the respondents but to deal with the most pertinent preliminary question as to whether the interim order is appealable.

[4] Mr Sephaka who is Counsel for the first and second respondents submitted that an interim order is not appealable and conceded that the confirmation of the rule nisi is an interim order. However, according to him when a Court has incorrectly decided a question of law such as in this case, it was obvious that the result violated the interests of justice and could not be allowed to stand. According to his argument such violation of the interests of justice caused irreparable harm to the wronged party.

[5] He further submitted that the Court erred on a point of law, which made the interim order susceptible to being appealed on the basis that the Presiding Judge was led by Counsel for the applicants to believe that ownership of the property can only

pass by registration with the third respondent, that even though a contract of sale of the property had been concluded with a third party prior to the rule nisi being issued the property was still registered in the name of the first respondent. It was therefore still his property and could be attached for the possible debts that he may have incurred if the applicants succeed in the latter application under the main action in case number:2023-079671.

[6] Mr Sephaka's argument is premised from the case of *Mekwe v Geyer* (A447/2017, 2595/2015) (2018] ZAGPPHC 778 (25 September 2018) wherein the following was said at paragraph 20:

"The respondent submitted that, insofar as the appellant contends that the court a quo did not consider the question of law, the question of law as formulated before the court a quo, i.e when does ownership pass from seller to purchaser, is trite. It was set out by the Supreme Court of Appeal in Legator McKenna Inc. v Shea and Others 2010 (1) SA 35 (SCA). The court confirmed that the abstract theory of transfer applies to transfers of immovable property. This entails that the passing of ownership occurs both on delivery (in casu, registration) coupled with a real agreement. Furthermore, where there is a time lapse between the conclusion of the sale and the transfer of the merx, the seller must take care of the merx during that time: Principles of Sale and Lease, E Kahn (General Editor), 2007, page 18, para 4.1.1."

[7] Mr Sphaka's reading of the *Legator McKenna Inc* cited is incorrect and misleading in so far as he maintained that the property in dispute was sold and that the application for the interdict had become moot. In paragraph 22 of the *Legator McKenna Inc* case, the Court when dealing with the passing of ownership under the abstract theory, said the following:

"In accordance with the abstract theory the requirements for the passing of ownership are twofold, namely delivery - which in the case of immovable property is effected by registration of transfer in the deeds office - coupled with a so-called real agreement or 'saaklike ooreenkoms'."

[8] It is clear that in terms of the abstract theory as encapsulated in the *Legator McKenna Inc* case that the requirement for the passing of ownership of the property in the current case, portion 85 (a portion of Portion 33) of Farm Nooitgedacht No 435, Registration Division J.Q, Mogale Local Municipality, Gauteng Province, had to be effected by registration in the Deeds Office. That hurdle has not been reached yet in this current matter. The immovable property has not been registered in the deeds office and as such there has not been passing of ownership in terms of the abstract theory.

[9] I find no merit in the first and second respondents' submission that the interim order is appealable based on an error of law. The interim order handed down by this Court is not final in effect and is open to alteration by the court below. It is not definitive of the rights of the parties and does not have the effect of disposing of a substantial portion of the relief claimed.

[10] Having found that the interim order handed down by this Court is unappealable- I do not find it necessary to decide on other grounds for leave to appeal which have been raised by the respondents.

[11] In the circumstances the following order is made:

- (a) The leave to appeal is dismissed.
- (b) The first respondent (Joshua Lasisi Iginla) and second respondent (Zimasa Stella Iginla) are ordered to pay costs on scale B.

MG Mashaba
Acting Judge of the High Court
Gauteng Division, Pretoria

APPEARANCES:

FOR THE FIRST AND SECOND APPLICANTS: ADVOCATE CGVO SEVENSTER
INSTRUCTED BY VEZI & DE BEER INC. ATTORNEYS, PRETORIA

FOR THE FIRST AND SECOND RESPONDENTS: ADVOCATE E SEPHEKA
INSTRUCTED BY: MAHLAKOANE ATTORNEYS, PRETORIA

DATED: 10 SEPTEMBER 2024.