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

CASE NO.: 2024-115325

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 29 October 2024

E van der Schyff

In the matter between:

Justus Henry-Carl Sasser (Jnr) N.O.

First Applicant

Pieter Hendrik Strydom N.O.

Second Applicant

and

Justus Henry-Carl Sasser (Snr)

First Respondent

Nomthandazo Nokhuthula Valencia Mdhluhi

Second Respondent

Master of the High Court

Third Respondent

JUDGMENT

Van der Schyff J

Introduction

[1] The applicants approach the court based on urgency for the following relief: (i) an order restraining and interdicting the first and second respondents from dealing with a specified immovable property without their consent; (ii) an order directing

and interdicting the second respondent to make rental payments directly into a specified bank account; and (iii) costs if the application is opposed.

- [2] After having heard counsel, the matter was struck from the roll due to a lack of urgency. Costs were reserved. I indicated to the parties that I would provide a written judgment explaining the order granted.
- [3] From the papers filed, it is evident that the notice of motion is dated 8 October 2024. The respondents were afforded until 11 October 2024 to file a notice of intention to oppose, and until 18 October 2024 to file an answering affidavit. The application was only served on the first respondent personally on 10 October 2024 at 17h30, and on 17 October 2024 on the second respondent by affixing. The first respondent filed a notice of intention to oppose on 18 October 2024 and an answering affidavit on 23 October 2024.
- [4] The applicants and the first respondent are trustees of the Sasser Family Trust.

The parties' contentions

- [5] The first applicant informs the court that the first respondent is utilising trust property for his personal gain, contrary to the provisions of the trust deed and the terms of a court order dated 23 September 2021.
- [6] The first applicant became aware on 6 September 2024 that the first respondent engaged with the second respondent and accepted her as a tenant in the property described above. The second respondent was directed to pay the deposit and monthly rental of R3000 per month into the first respondent's personal bank account.
- [7] Several letters were distributed to the second and first respondents, respectively, demanding the payment of all monies due to the trust and to discontinue paying amounts into the first respondent's personal account.

- [8] The first respondent informs the court that he submitted a 'with prejudice' proposal to the applicants on 17 October 2024. This, he avers, renders the application entirely moot and, at least, disposes of the urgency.
- [9] He proposed, among others, to consent to an order in terms of which the property may only be dealt with, with the consent of all trustees, and that the rental payment be paid into the Trust's Nedbank account. The applicants responded with a counter-proposal, which he did not find acceptable. The respondent subsequently instructed the tenant to pay the monthly rental into the impugned Nedbank account. This account is a bank account of the trust, but the applicants claim that the respondent hijacked the account - a claim disputed by him.
- [10] The first respondent explains that the space he is leasing to the second respondent forms part of his private residence, erected on the said property. It was initially built to accommodate his ageing mother and a carer under his roof. He already instructed the second respondent to pay the rent and other charges into one of the Trust's bank accounts.
- [11] The first respondent informs the court that the applicants have instructed all tenants to pay their rentals into the bank account of Eagles Nest Manco (Pty) Ltd. This is not one of the Trust's bank accounts. The first applicant is leasing out the greater portion of his private residence as a guesthouse, for his own account. The first applicant's answer to this allegation is that it 'is irrelevant to the dispute at hand, relates to other disputes and legal proceedings.'
- [12] He alerts the court to the existence of several disputes between himself and his co-trustees, which disputes were referred to arbitration.

Striking out application by the applicants

- [13] The context within which a particular dispute arises is not always irrelevant. *In casu*, the context is a family dispute, primarily between a father and his son, that developed over several years.

[14] I find it unnecessary to strike out any portions of the answering affidavit as the first respondent contextualises the dispute with the information provided.

Urgency

[15] The applicants contend that the application has been launched on a semi-urgent basis, truncating the time periods to a limited extent only.

[16] The question is, however, whether the applicants made out a case justifying their application to be heard on an urgent basis, allowing them to jump-the-queue, and cut in before a great number of other applicant patiently awaiting their allocated opposed motion court dates.

[17] The applicants aver that the matter is urgent because they will not be able to obtain substantial redress in due course if the relief sought is not granted.

[18] They aver that the first respondent is destitute and will not be able to repay any of the monies due to the trust. The averment that the first respondent is destitute is made with reliance on the fact that a *nulla bona* return was obtained when the Sheriff sought to execute against a warrant of execution.

[19] The first respondent denies being destitute. He explains that ever since he caused the trust to be created through his late mother, he had invested every 'single penny [he] earned in the development of Eagles Nest estates.' He had built up a loan account in excess of R10 million against the trust and more that R2.5 million against Eagles Nest Erf 2[...] C[...]. The applicants' response, again, is to state that the content is irrelevant to the dispute at hand.

[20] The applicants did not convince this court that they would not be able to obtain redress in due course if the application was not dealt with urgently.

ORDER

In the result, the following order is granted:

- 1. The application is struck from the roll due to lack of urgency, with costs on scale B.**

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv. M. Jacobs
Instructed by: Klagsburn Edelstein Bosman Du Plessis Inc.

For the respondent:
Instructed by: Marius Verster & Associates Inc.
Date of the hearing: 29 October 2024
Date of judgment: 29 October 2024