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

SIGNATURE Case Number: 077838/25

Heard on: 29 May 2025

Judgment: 10 June 2025

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: ~~YES~~/NO

DATE 10 June 2025

In the matter between:

LIJUN GAO

First Applicant

YINYING ZHENG

Second Applicant

and

MATHYS JOHAN LOUW NO

First Respondent

THE REGISTRAR OF DEEDS, PRETORIA

Second Respondent

LOUW LOUW INCORPORATED ATTORNEYS

Third Respondent

JUDGMENT

STRIJDOM, J

- [1] In this matter the applicants have, on an urgent basis, launched an application seeking an interim interdict restraining the transfer of the property known as Section Number 39/2006 (Flat Number 2[...]) Measuring 208 square metres. In the building known as Nikita's View Complex, situated at S[...], Ext 6, Erf 1[...], E[...] Golf Estate, Vanderbijlpark,) ("the property") pending the outcome of action under case number 075197/2025.
- [2] At the commencement of the application, I ruled that the application is urgent.
- [3] The application is opposed by the first and third respondent.
- [4] The factual matrix underpinning the applicants' case can be summarised as follows:
- 4.1 On 10 September 2024 applicants and first respondent entered into an agreement of sale in terms whereof the applicants purchased the property from first respondent.
 - 4.2 It is common cause that applicants complied with their contractual payment obligations by 12 November 2024.
 - 4.3 Despite numerous endeavours, the first respondent, through third respondent (i.e. the transferee attorney) was unable to affect or achieve registration and transfer within a reasonable period.
 - 4.4 On 2 April 2025 the applicants' attorney sent a letter to the third respondent to inform them that their conduct constitutes a breach of the agreement and afforded first respondent 30 days within which to remedy the breach.
 - 4.5 As a result of first respondent's continued inability to achieve registration and transfer of the property the agreement was consequently terminated on 2 May 2025 as per annexure "D" to the founding affidavit.
 - 4.6 Applicants consequently instituted action against first respondent which combined summons was served on first respondent on 23 May 2025.
 - 4.7 Despite service of the summons in terms whereof an order was sought, inter alia, confirmation of cancellation of the agreement, first

respondent continued to lodge the registration documents with the second respondent on 26 May 2025.

[5] The case for the respondents can be summarised as follows:

- 5.1 The current proceedings were only instituted on the very same day that the respondent's gave formal notice – on 23 May 2025 – that lodgement would proceed on 26 May 2025;
- 5.2 In terms of the agreement of sale first respondent agreed that the purchase price would be payable within three months of signature with the latest date being 5 December 2024;
- 5.3 The full payment, including the transfer fees was made on 12 November 2024. Only thereafter could the transfer process commence.
- 5.4 The respondents took all reasonable and timeous steps to prepare the matter for lodgement, including:
 - 5.4.1 Having the purchasers sign the transfer documents on 20 November 2024;
 - 5.4.2 Locating the original title deed, and subsequently obtaining the missing second page from the Pretoria Deeds Office on 21 January 2025;
 - 5.4.3 Securing the Executor's signature on 23 January 2025;
 - 5.4.4 Rates clearance figures were obtained and paid on 23 January 2025;
 - 5.4.5 Submitting the Power of Attorney to the Master on 27 January 2025, endorsed on 10 February 2025;
 - 5.4.6 Paying transfer duty to SARS on 28 January 2025;
 - 5.4.7 Levy clearance figures were obtained and paid on 11 February 2025, and the levy clearance certificate was issued on 18 February 2025. Shortly thereafter, the transfer documents were forwarded to the correspondents in Pretoria in preparation for lodgement, while awaiting electronic issuance of the rates clearance certificate;

- 5.4.8 The only outstanding item preventing lodgement was the rates clearance certificate which could not be obtained due to delays caused by Emfuleni Local Municipality. The Municipality incorrectly alleged that the Body Corporate was in arrears for the entire scheme. Upon further investigation it was confirmed that the issue arose not from actual arrears, but from the Municipality's failure to allocate payments correctly;
- 5.4.9 On 5 March 2025, the applicants were advised via email that the respondents were encountering difficulties obtaining the rates clearance certificate and were making every effort to resolve the issue. In good faith the respondents offered the applicants early occupation without charging occupational rent of the property. This offer was not accepted;
- 5.4.10 The respondents issued a formal letter of demand to the Municipality, threatening legal action if the matter was not resolved. The matter was finally resolved, and the respondents reapply for rates clearance figures expired. This ultimately led to the issuance of the certificate.

- [6] The respondents contend that the transfer was ready for lodgement within a reasonable time, and that the delays experienced were entirely attributable to a third-party administrative failure, for which the first respondent cannot be held responsible.
- [7] If the interdictory relief sought is interim in effect, form and substance the applicant must establish the following to succeed:
- (a) A right prima facie even though open to some doubt;
 - (b) A well-grounded apprehension of irreparable harm if the interim relief is not granted;
 - (c) A balance of convenience in their favour; and
 - (d) The lack of another remedy adequate in the circumstances.

A CLEAR OR PRIMA FACIE RIGHT

- [8] The applicants contend that they have a contractual right to seek cancellation of the agreement in the event of a breach by the first respondent.¹
- [9] The respondents contend that the applicants have no prima facie right to halt transfer due to the period of mora being unreasonable, and therefore the cancellation being bad in law.
- [10] The delay in transfer was not caused by the first respondent, but by the Emfuleni Municipality's failure to process and allocate payments correctly.
- [11] Transfer was conditional on the issue of a rates clearance certificate, which is entirely within the control of the local authority. The 1st respondent, through the 3rd respondent, took all necessary steps, made payments, and followed up extensively to secure the certificate.
- [12] It was stated in *Trust Bank van Afrika Bpk v Western Bank* 1978 (4) SA 281 (A) that a party cannot place another in breach where the delay arises from supervening impossibility or third-party failure.
- [13] Under the doctrine of mora ex persona, the first respondent is not in default unless and until proper demand is made in circumstances where performance is reasonable possible – and it was already shown that demand was too short – so there was no proper demand made.²
- [14] In my view there is no satisfactory prima facie evidence of a right.

AN ACTUAL OR WELL-GROUNDED APPREHENSION OF IRREPARABLE LOSS

- [15] It is trite that an interdict will only be granted if, in addition to a right prima facie established, an actual or well-grounded apprehension of irreparable loss or infringement of rights is proved as an objective fact based on substantive grounds.

¹ Caselines: 02-1 page 10 para 38 FA

² See *Mahabeer v Sjarma* NO 1985 (3) SA 729 (A)

[16] It was submitted on behalf of the applicants that they will be deprived of enforcing their rights and will be forced into the agreement despite cancellation and without having an opportunity to have the cancellation confirmed by a competent Court.³

[17] It is common cause that the applicants have already issued summons and is pursuing the matter on the merits for damages.

[18] The transfer of property is not irreversible.⁴

[19] There is no irreparable harm since the applicants are receiving value in the form of an immovable property for their purchase price.

[20] In good faith the respondents offered the applicants early occupation of the property without charging occupational rent pending transfer of the property. The applicants did not accept the offer.

[21] In my view the applicants have failed to establish a reasonable apprehension of irreparable harm.

BALANCE OF CONVENIENCE

[22] The balance of convenience is inextricably bound up with the discretion of the Court. The exercise of the discretion ordinarily, or ultimately, turns on the balance of convenience.

[23] The applicants contend that if the relief sought is not granted, they will have no recourse as the action proceedings under case number: 075197/2025 would become redundant. It was further submitted that the prejudice to be suffered by them is far greater than the prejudice any of the respondents will suffer.⁵

³ Caselines:02-1 page 11 para 47 FA

⁴ See *Gundivana v Seko Development* 2011 (3) SA 608 (CC)

⁵ Caselines: 02-1 page 11-12 paras 48-49 FA

[24] The respondents contend that the balance of convenience favours the first respondent being the executor of the estate, as he represents the interest of many beneficiaries and creditors, and as the estate already paid the various amounts to obtain various documents so that transfer may take place, as well as the fact that winding up of the estate would be substantially delayed if the interdict was granted.

[25] The first respondent and estate have complied with their obligations under the sale agreement in that as executor the first respondent has: accepted the Offer to Purchase; Received full payment, including transfer fees and transfer duty; Signed all transfer documentation; Obtained the Master's endorsement; and Paid SARS and secured rates clearance.

[26] Any further delay in transfer will trigger further costs to the estate as clearance figures and certificates will expire; and they will have to be obtained yet again at costs to the estate, and to the beneficiaries and creditors of such estate.

[27] Under the circumstances I am of the view that there is greater possible prejudice to the first respondent compared to the possible prejudice of the applicants and that the balance of convenience favours the first respondent.

ALTERNATIVE REMEDY

[28] "... It is also clear that the grant of an interdict is a discretionary remedy. One of the main factors which the Court is enjoined to take into account in deciding whether to exercise its discretion is whether there is any other remedy open to the applicant which can adequately protect him in his rights ..."⁶

[29] The applicants have already instituted action wherein they claim damages which shows the existence of an alternative remedy.

⁶ *Johannesburg Consolidated Investment Co Ltd v Mitchmor Investments (Pty) Ltd and Another* 1971 (2) SA 397 (WLD) 404 E-F)

[30] It was decided in *Gundwana v Steko Development*⁷ that the transfer of immovable property is not irreversible, which creates a further remedy for the applicants.

[31] For the above reasons I conclude that the applicants failed to establish the requirement for interim interdictory relief.

[32] In the result, the application is dismissed with costs on party and party Scale B.

JJ STRIJDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

⁷ 2011 (3) SA 608 (CC)

For the Applicants:

Adv M Jacobs

Instructed by:

Coombe Commercial Inc

For the first and second Respondent:

Adv. GV Meijers

Instructed by: Louw Louw Inc
Attorneys

