



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)
JUDGMENT**

Reportable/Not Reportable

Case no: 20783/24

In the matter between:

T[...] **S[...]**

Applicant

and

J[...] **V[...]** **C[...]** **P[...]**

First Respondent

CLUVER MARKOTTER INC

Second Respondent

Neutral citation: *T[...]* *S[...]* v *J[...]* *V[...]* *C[...]* *P[...]* and Another (Case no 20783/24) [2025] ZAWCHC (01 AUGUST 2025)

Coram: NJOKWENI AJ

Heard: 26 May 2025

Delivered: 01 August 2025

Summary: Interim anti-dissipatory interdict – *sui generis* interdict– additional requirements – intention requirement – precedent trite – Knox D’Arcy followed – legal principles in KSL v AL binding – condonation late filing replying affidavit –

warning on abuse of process – discretion of the court in costs - best interest of the child considered.

JUDGMENT

Njokweni AJ

Introduction

[1] This is an application for an anti-dissipation interdict. The Applicant seeks an interim anti-dissipation interdict to protect the Applicant's counter claims in pending divorce proceedings instituted by the First Respondent in this division under case number:- 18658/2024.

[2] The Applicant, T[...] S[...], seeks to prevent the First Respondent, J[...] V[...] C[...] P[...], from dissipating funds obtained from the sale of their jointly owned immovable property ("sale proceeds"). The Second Respondent, a law firm known as Cluver Markotter Inc, currently holds the sale proceeds in trust and does not oppose the application. The Applicant argues that without the interdict, her claims for maintenance and other rights would be rendered ineffective. The application is opposed by the First Respondent.

The relevant facts

[3] The Applicant and the First Respondent ("the parties") married each other on 1 November 2015 at Bogota, Republic of Colombia, in accordance with the Colombian laws, and which marriage still subsists. Accordingly, the proprietary consequences of the marriage between the parties is governed by the Colombian laws. There is one minor child born of the marriage between the parties, VH [...], a 9 year-old boy born on 12 January 2016 ("the minor child").

[4] At the age of 23 the First Respondent suffered a stroke, which left him paralysed on one half side of his body. He was later diagnosed with Hemiparesis, a condition that severely impacted his day-to-day functioning. He is medically unfit to work a normal job because his condition seriously impacts his short term memory and motor skills.

[5] As a result, the First Respondent's parents, (who own a fruit export business in Colombia) have been generously supporting him financially for the past 20 years, and later extended the financial support to the Applicant and the minor child. The Applicant received a monthly allowance of R90 000 from the First Respondent's parents, which she used for her personal expenses and those of the minor child. The Applicant alleges these funds came from the Respondent's shareholding in his family business in Colombia, while the Respondent claims they were *ex gratia* payments from his mother.

[6] The mother of the First Respondent even assisted the parties financially for the purchase of an immovable property in an upmarket secured residential estate located in Stellenbosch, Western Cape ("matrimonial home"). The parties lived together in the matrimonial home. In June 2023, the marital relationship began to deteriorate significantly, leading to the First Respondent leaving the matrimonial home in May 2024 to live independently.

[7] The First Applicant's family business in Colombia fell into hard economic time due to COVID 19 pandemic and is currently in the process of liquidation in that country. Following the departure from the matrimonial home, his parents paid for his new rental accommodation and continued to pay the Applicant's monthly allowance, albeit at a reduced amount compared to the R90,000 they had consistently provided for over a decade..

[8] The parties decided to sell their matrimonial home and mutually agreed to share proceeds of the sale thereof equally. On 26 August 2025, whilst the matrimonial home was in market for sale the First Respondent instituted divorce proceedings in this division under case number: 18658/24., Notably, the First Respondent makes no offer of maintenance for the Applicant, but made an offer of

R5000 per month for the minor child.

[9] The marital regime applicable to the parties' marriage is in dispute, as well as the First Respondent's liability to pay spousal maintenance to the Applicant. That precipitated the launch of this application for an interim interdict, on an urgent basis, directing that the sale proceeds be held in Second Respondent's trust account pending the return date to show cause why the sale proceeds must not be kept in the Second Respondent's trust account pending finalisation of the divorce proceedings. The application was struck from the urgent roll for want of urgency and it was later allocated to me for hearing on semi-urgent roll.

[10] It is apparent from the papers (although the date is not mentioned) that the matrimonial home was subsequently sold and the Second Respondent was appointed as the transferring attorneys. Hence, the sale proceeds were paid to the Second Respondent. Pending the adjudication of this application, and by agreement between the parties, the sale proceeds are kept in the trust account of the Second Respondent. In the divorce action, the Applicant has since filed a plea and counter claim, in which she *inter alia* claims that their matrimonial regime is one in community of property, spousal maintenance and an increased amount for the maintenance of the minor child.

[11] The Applicant contends that she fears the First Respondent may dissipate these funds, leaving her unable to enforce claims for maintenance or patrimonial relief.

[12] The reasons for Applicant's fears are summarised below.

Applicant's contentions

[13] The Applicant contends that save for 50% share of the sale proceeds currently held in Second Respondent's trust, the First Respondent:

- (a) has no other property or assets in South Africa, no South African bank account, and no right to reside in South Africa.

(b) has stated his intention to leave South Africa for Colombia and claimed the Applicant would never hear from him again.

Maintenance for Minor Child

[14] The Applicant claims the First Respondent owes maintenance for the minor child, and the amount he tenders is insufficient to cover the expenses of the minor child because the minor child attends an expensive private school, and the Applicant's income is insufficient to cover the additional expenses.

Threats and Conduct

[15] The Applicant alleges that the First Respondent pressured her to sell the matrimonial home and threatened to leave for Colombia, raising concerns regarding his alleged intention to avoid satisfying any of the Applicant's counter claims against him. These facts collectively form the basis for the Applicant's request for an anti-dissipation interdict, aimed at preventing the Respondent from utilising his portion of the sale proceeds until the divorce is finalised. However, she wants to access her 50% share of the sale proceeds if she has not already accessed and/or utilised them.

Issues for determination

[16] The crisp issue for determination is whether the Applicant has met the minimum threshold requirements to justify granting an interim anti-dissipation interdict to prevent the Respondent from utilizing the proceeds of the sale of the matrimonial home until the divorce is finalised.

Legal Principles Governing Anti-Dissipation Interdicts

[17] The legal framework for granting anti-dissipation interdicts is established in South African case law. An anti-dissipation interdict may be granted where a respondent is believed to be deliberately arranging his affairs so as to ensure that by the time the applicant is in a position to execute judgment, he will be without assets

or sufficient assets upon which the applicant expects to execute. Its purpose is to preserve the asset which is currently an issue between the parties. The onus is on the applicant for such an interdict to establish the necessary requirements for the grant of the interdict.¹

[18] The requirements for an interim interdict are: (a) a *prima facie* right, even if it is open to some doubt; (b) injury actually committed or reasonably apprehended; (c) the balance of convenience; and (d) the absence of similar protection through any other remedy.² In **KSL**,³ the SCA cited with approval the principle enunciated by the SCA in **Knox D'Arcy Ltd and Others v Jamieson and Others**⁴ ("Knox D'Arcy") where the SCA asserted and held that an anti-dissipation interdict provides a remedy where an applicant has demonstrated on the established basis of an interim interdict; (a) a claim against a respondent and (b) that the respondent is [intentionally] secreting or dissipating assets, or is likely to do so with the intention of defeating the applicant's claim⁵. These jurisdictional facts are necessary to justify the granting of an anti-dissipatory relief were affirmed by the SCA recently in **Bassani Mining (Pty) Ltd v Sebosat (Pty) Ltd and Others**.⁶

Application of law to the facts

Applicant's claims against the First Respondent

[19] The Applicant's claims against the First Respondent are contained in her plea counter claim filed in the divorce proceedings. They are straightforward: spousal maintenance for the Applicant and maintenance for the minor child. The basis of her entitlement to spousal maintenance is the alleged matrimonial regime that governs the proprietary consequences of their marriage. She claims that the parties are married in community of property. In support of her contention in this regard, Applicant attached to her founding papers the Columbian Civil Code. The First Respondent disputes this contention to the extent it purports to include assets

¹ KSL v AL 2024 (6) SA 410 (SCA) at 416C-E ("KSL").

² Setlogelo v Setlogelo 1914 AD 221 at 227; Webster v Mitchell 1948 (1) SA 1186 (W) at 1187.

³ Para [16].

⁴ Knox D'Arcy 1996 (4) SA 348 (A) at 372G-H.

⁵ Ibid at 372D-F and at 373F-H.

⁶ Bassani Mining (Pty) Ltd v Sebosat (Pty) Ltd and Others [2021] ZASCA 126 para [1].

which he owned prior to the conclusion of their marriage.

[20] It is common cause that there is no *ante nuptial* contract that was executed by the parties. However, the legal consequence of the lack thereof *apropos* the proprietary consequences of the marriage between the parties is in dispute. In his answering affidavit, the First Respondent attached a letter from his attorney in Bogota, Colombia. According to the latter mentioned letter, “...*the personal property acquired prior to the celebration of the marriage bond, are not part of the marital assets, therefore they are excluded from the estate to be liquidated within the marital partnership that originated on the occasion of the marriage celebrated in the Republic of Colombia between Mr. J[...]* V[...]

C[...]

P[...]

and Mrs T[...]

S[...]

...”.

[21] The significance and relevance of the matrimonial regime applicable to the parties marriage in this application seems to be the shares or financial interest that the First Respondent is said to possess in his family fruit exporting business in Colombia. The First Respondent (although through funds from his family) paid spousal maintenance to the Applicant and from the same funds catered for the maintenance needs of the minor child. In the circumstances, it would seem to me that the Applicant has shown a *prima facie* right, although open to doubt, to spousal maintenance from the First Respondent. In addition, it seems to be common cause that once the divorce order is granted the primary residence and primary care giver to the minor child would be the Applicant. In the result, there is a *bona fide* counterclaim against the First Respondent for payment of maintenance for the minor child. This *prima facie* right is to the claims of maintenance for the Applicant and the minor child.

Intention requirement

[22] First and foremost, in determining the intention requirement in anti-dissipatory interdict, the following facts which I find to be relevant are common cause. The First Respondent:

- (a) at the age of 23 years suffered stroke which left him paralysed on one side of his body.

- (b) for the first 12 years of the marriage between the parties has never worked or been gainfully employed.
- (c) received funds in the amount of R90 000 per month from his family business in Colombia to sustain himself, Applicant, and the minor child.
- (d) vacated the matrimonial home due to breakdown of the marriage relationship and after rented another property where he resided on his own. alone.
- (e) after he vacated the common matrimonial home, family funds were reduced to between R10 000 and R15 000.
- (f) after he vacated the matrimonial home, he and the Applicant mutually agreed to sell the common matrimonial home and to share the sale of proceeds equally.
- (g) for the duration of the marriage did not have a South African Bank account.
- (h) continues to pay for the minor child school fees from funds he receives from his family in Colombia.
- (i) instituted divorce proceedings in which he has offered payment of R5000 per month towards maintenance of the minor child in addition to medical and educational expenses for the minor child.

[23] From the above common cause facts and the papers filed of record, it can be gleaned that:

- (a) the First Respondent does not intend to abdicate his maintenance responsibilities as the father of the minor child.
- (b) the First Respondent's family either can no longer afford monthly payments of R90 000 towards maintenance for the First Respondent, Applicant and the minor child, or simply refuse to pay the said amount to subsidise the Applicant's lifestyle after the First Respondent vacated the matrimonial home at the instance of the Applicant.
- (c) The Applicant earns R36 000 per month but seem not to be willing to contribute towards the maintenance of the minor child when in fact and in law is obliged to do so.
- (d) The First Respondent has since the age of 23 years when he suffered

a stroke, been reliant on his family for his livelihood and maintenance of both Applicant and the minor child.

(e) The funds from the First Respondent's family were always paid into Applicant's personal account and managed by her.

(f) The First Respondent family continues to pay educational expenses of the minor child.

[24] The First Respondent did not voluntarily vacate the matrimonial home prior to the transfer of the matrimonial home to its current registered owners. He was barred from entry by the Applicant and threatened with a fire arm by Applicant's father, who warned him never to return to that property. He was subsequently compelled to rent alternative accommodation, resulting in an additional cost for the First Respondent.

[25] The First Respondent's family provided substantial funds for the purchase of the matrimonial home by the parties. In addition, the First Respondent's family purchased a Mercedes Benz motor vehicle that was registered in Applicant's name. Despite Applicant's contention that the parties are married in community of property, she has sold the Mercedes Benz for R218 000 and used the proceeds of the sale thereof without sharing them with the First Respondent.

[26] The Applicant attempted to convince this Court that the First Respondent has made threats to depart from South Africa and not to return.. This contention is not supported by objective facts and evidence on the papers.

[27] The reasons proffered by the Applicant as grounds for granting of anti-dissipation interdict appeared to be premised on "protection" of a disputed claim for spousal maintenance. From the Applicant's belated replying affidavit, it is apparent that the First Respondent has left the Republic of South Africa and is currently residing in Colombia. The Applicant married a Columbian and has not assisted him to obtain a visa in South Africa necessitating his departure from South Africa. This too is not a circumstance that would allow the Applicant to hold on to the proceeds of the sale pending a divorce. Not all divorces instituted in South African Courts are exclusively between parties who both live in South Africa.

[28] The principle reinforced in **Knox D’Arcy** was stated as follows:

“The question which arises . . . is whether an applicant need show a particular state of mind on the part of the respondent, i e, that he is getting rid of the funds, or is likely to do so, with the intention of defeating the claims of creditors. Having regard to the purpose of this type of interdict the answer must be, I consider, yes, except possibly in exceptional cases. As I have said, the effect of the interdict is to prevent the respondent from freely dealing with his own property to which the applicant lays no claim. Justice may require this restriction in cases where the respondent is shown to be acting mala fide with the intent of preventing execution in respect of the applicant’s claim. However, there would not normally be any justification to compel a respondent to regulate his bona fide expenditure so as to retain funds in his patrimony for the payment of claims (particularly disputed ones) against him. I am not, of course, at the moment dealing with special situations which might arise, for instance, by contract or under the law of insolvency.” [My emphasis]

prima facie right apropos anti-dissipatory interdict

[29] In *casu*, the objective facts neither support the proposition that the First Respondent is intentionally secreting or dissipating assets, nor that he is likely to do so with the intention of defeating the Applicant’s claim. These jurisdictional facts necessary to justify an anti-dissipatory interdict were not established. If the said jurisdictional factors were established, even though subject to some doubt, then a *prima facie* right to an anti-dissipatory interdict would have been established. In the result, I find that the Applicant has not established a *prima facie* right to justify granting of an anti-dissipatory interdict.

Reasonable apprehension of harm

[30] I also find that the Applicant has not demonstrated any injury committed or reasonably apprehended. The Applicant is abusing the Court process by utilising the anti-dissipatory interdictory relief to renege on a mutual agreement to sell the matrimonial home and to share the sale proceeds equally with the First Respondent.

It is the Applicant who has actually inflicted injury to the First Respondent by selling a joint asset (Mercedes Benz) and disposing of the sale proceeds thereof for own personal benefit and needs. Notably, she does this after commencement of divorce action.

Balance of convenience

[31] Notwithstanding Applicant's alleged apprehension of harm and First Respondent's absence from the Republic of South Africa, the First Respondent is opposing these proceedings and has provided this Court with objective facts and evidence indicating that he is unlikely to abandon the minor child and abdicate his maintenance obligations towards the minor child.

[32] Accordingly, the balance of convenience tips on First Respondent's favour.

Absence of appropriate redress in due course

[33] The Applicant concedes that, but for the movable assets of the joint estate (in her version) in her possession within the Republic of South Africa and the sale proceeds of the matrimonial home currently held in trust by Second Respondent, the First Respondent has no other assets in the Republic of South Africa.

[34] If Applicant is successful on proving her counterclaims at trial, the orders sought in the counterclaim (if granted) would have to be executed in the Republic of Colombia. The First Respondent consents to a mirror order being issued by the divorce Court. Notwithstanding, Applicant has made it clear in her papers that she has no confidence that the Colombian Courts would give effect to such orders. The question is: why does she proceed with such a counter claim? The objective and logical conclusion is that the Applicant launched this application to coerce First Applicant into submission to relinquish his 50% share of sale proceeds of the matrimonial home. This application is *mala fide* and is abuse of Court process to which this Court does not take kindly.

Conclusion

[35] The Applicant brought this application under extremely truncated timeframe, leaving the First Respondent with minimal opportunity to address the allegations and necessitating a postponement of the matter at great cost. The urgency was, moreover self-created and the necessity of bringing this application so urgently is also questionable. The matter was scheduled for 27 January 2025 and, by mutual agreement postponed to the semi-urgent roll for hearing on 26 May 2025. Despite the timelines ordered by the Judge President of this division for filing of the replying affidavit, the Applicant's replying affidavit was filed late.

[36] An application was submitted for condonation of the late filing of the replying affidavit. Although the First Respondent's counsel sought to oppose the condonation application in the heads of argument, no formal opposition was filed. Similarly, a complaint was raised in the written submission filed for the First Respondent, asserting that it is not permissible for the Applicant to make out a new case in the replying affidavit, and that established practice is to strike out averments purporting to do so in the replying affidavit, I agree. However, no formal application to strike out was moved before me. I considered the replying affidavit so as to have a complete set of facts and evidence to arrive at a just and equitable decision.

[37] For reasons discussed above, the Applicant has failed to satisfy the legal requirements for an anti-dissipatory interdict, especially to demonstrate that the First Respondent had an *intention* to dissipate assets or engage in conduct that suggests a clear intention to dissipate assets.

[38] This application is not concerned with the best interest of the minor child, rather it serves as a tool to spite and force the First Respondent into submission to relinquish his legitimate 50% share of the sale proceeds of the matrimonial home. Accordingly, I could not and did not find exceptional circumstances that would justify relaxing the intention requirement for the type of relief sought in this application.

Costs

[39] Generally, costs follow the result. The basic rule is that costs are in the

discretion of the court. In exercising that discretion, this Court, must consider whether the conduct of the Applicant warrants a punitive costs order against her.

[40] An attorney and client costs award is made where the court wishes to strongly express its displeasure about the conduct of the losing party and, by making such an award, it ensures that the successful party is indemnified in respect of all the reasonable costs of the litigation.⁷ In the circumstances, and for the reasons set out above, I was inclined to express this Court's displeasure on abuse of its process by mulcting the Applicant with a punitive costs order on an attorney and client scale.

[41] However, having due regard to the financial difficulties expressed by both parties in this application and in so far as such difficulties are likely to negatively impact the parties' affordability to pay maintenance towards the minor child, I have decided not to do so.

[42] The First Respondent is successful in this application and as such there is no reason why costs should not follow the result.

Accordingly, I make the following order.

1. The late filing of the replying affidavit is hereby condoned.
2. The application is dismissed.
3. The Applicant shall pay First Respondent's party and party costs on the High Court Scale including the costs of counsel as taxed on scale B plus the costs occasioned by the postponement of 27 September 2024.

NJOKWENI AJ
ACTING JUDGE OF THE HIGH COURT

⁷ Sentrachem Ltd v Prinsloo 1997 (2) SA 1 (A) at 22B-C.

Appearances:

For the plaintiff: Adv Fehr

Instructed by: Kropman Attorneys

For the defendant: Adv de Wet

Instructed by: Brand Roberts Attorneys