

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 4307/2022

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED.

DATE: 30/07/2023 SIGNATURE: [Redacted]

In the matter between:-

OSZ TAYOB TRADING PIETERSBURG (PTY)LTD T/A EH HASSIM

APPLICANT

AND

PAULINA NTEBO RAMUSI

FIRST RESPONDENT

PAULINA NTEBO RAMUSI N.O

SECOND RESPONDENT

STANDARD BANK OF SOUTH AFRICA LIMITED

THIRD RESPONDENT

REGISTRAR OF DEEDS, PRETORIA

FOURTH RESPONDENT

CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY

FIFTH RESPONDENT

POLOKWANE LOCAL MUNICIPALITY

SIXTH RESPONDENT

REGISTRAR OF DEEDS, POLOKWANE

SEVENTH RESPONDENT

OAKFIELD BODY CORPORATE

EIGHTH RESPONDENT

FIRSTRAND BANK LIMITED

NINTH RESPONDENT

**JUDGMENT
(LEAVE TO APPEAL)**

MANGENA AJ

- [1] On **06 May 2025** I gave an order authorising execution of two immovable properties registered in the names of the First Respondent and her late husband, Mr Isiah Sekgweng Ramusi. The authorisation followed an application made by the Applicant to declare the two immovable properties specially executable after the First Respondent failed to honour a judgment in the amount of **R2 059.873.37** granted on **09 June 2020**.
- [2] The First Respondent is the executrix in the estate of her late husband to whom she was married in community of property. For convenience I have kept the description of the parties as it appeared in the Rule 46A application to which this application for leave to appeal relates.

- [3] The First Respondent seeks leave to appeal against the orders I made and contends that there are reasonable prospects of success on appeal.
- [4] In support of the contention regarding the reasonable prospects of success, counsel for the First Respondent advanced three grounds of appeal.
- [5] The first ground of appeal was that in the opening paragraph of the judgment I said that "Applicant obtained monetary judgment of R2 059 872.37 plus interest against the First Respondent, Ms. Paulina Ntebo Ramusi **both in her personal capacity and in her capacity as the executrix of the estate late Isiah Sekgweng Ramusi**". It was submitted that this statement made me to arrive at a wrong conclusion as there was no judgment obtained against the estate of the late Isiah Sekgweng Ramusi. Had I appreciated that the late Mr. Ramusi was not a party to the proceedings, I probably would have not authorised the execution of the property.
- [6] The submission is appealing at first blush but does not survive legal scrutiny when measured against applicable legal principles governing appeals. The undisputed fact is that an appeal lies against an order and not the reasons. Ms Ramusi is indebted to the applicant and has exhausted all her legal remedies to challenge the finding that she is indebted to the Applicant in the amount of **R2 059 872.37**. The applicant, as correctly pointed out by her counsel, Advocate Mokwena, is entitled to the enforcement of that judgment. No amount of subterfuge, dilatory and less than perfect defences should be allowed to delay this. Indeed the rule of law requires that court orders be obeyed.

- [7] The First Respondent together with her late husband are registered owners of the two properties. The Applicant approached the court for an order to have the two properties declared specially executable in fulfilment of a court judgment. I found she is entitled to that relief on the basis that she satisfied the requirements listed under **Rule 46A of the Uniform Rules**. The correctness of that finding is undisturbed by the erroneous inclusion of Ms. Ramusi in her capacity as the executrix of the estate of her late husband. The erroneous inclusion is not a legal finding sufficient to establish a ground of appeal. There is a difference between a factual statement and a legal finding. An incorrect factual statement does not automatically leads to a wrong legal finding. As stated above and supported by many legal authorities, an appeal lies against a substantive order and not the reasons for judgment. (See *Western Johannesburg Rent Board and Another v Ursula Mansions (Pty) Ltd*, 1948 (3) SA 353 (A) at 355).
- [8] The other two grounds related to non-joinder of the heirs in the will of the late **Mr. Ramusi** as well as the **Master of the High Court**.
- [9] The issue of joinder has been dealt with adequately in the judgment and I remain unpersuaded that the interest of the heirs can trump the rule of law which requires that court orders be obeyed and enforced. Their interest is financial and not legal, and their joinder is not necessary.
- [10] The **Master of the High Court** is a creature of statute and is in law obliged to comply with court orders and ensure that they are duly executed. I do not read Rule 6(9) to

be compulsory in every instance and in any event the execution is against the share of the property owned by the judgment debtor. The fact that the property is co-owned with the deceased does not provide sufficient basis to involve the Master of the High Court.

[11] As explained in the judgment, the heirs will derive their benefit out of the proceeds of their father's estate once all the debts have been settled. As matters stand, the deceased's estate is tied to that of the debtor by operation of law. The Master has no role to play in this litigation. It is therefore unnecessary to drag her into this proceedings.

[12] Consequently, leave to Appeal is refused with costs on a party and party scale B of the High Court.


M.I. MANGENA AJ
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

FOR APPLICANT : SHAHEED DOLLIE INCORPORATED
FOR RESPONDENT : RAMUSI ATTORNEYS
HEARD ON : 24 July 2025
DELIVERED ON : 30 July 2025