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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: **2024- 116548**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE 19/8/2025

In the matter between:

AQUEEL PATEL NO in his capacity as curator to MAHOMED DEDAT,
ZAIBOONISHA DEDAT ,SHAHEDA DEDAT ,ZOHRA MAHOMED DEDAT
,ISMAEL BHOJA NO Applicant

and

MOHAMED NAEEM DEEDAT First Respondent

REGISTRAR OF DEEDS Second Respondent

JUDGMENT IN THE APPLICATION FOR LEAVE TO APPEAL

BADENHORST AJ:

[1] The applicant applies for leave to appeal against my judgment dated 18 December 2024 in terms of which I dismissed its application for the status quo to be

preserved in relation to a one eighteenth fraction [“the fraction”] of an undivided share of the ownership in a property situated at Erf 2[...] Fordsburg (“the property”) with the street address 4[...] L[...] Road, F[...], Johannesburg, *pendente lite*.

[2] The essential question at this stage of the proceedings is whether there is a reasonable prospect that another court would arrive at a different conclusion to what is stated in paragraph [20] of the judgment, namely:

“[20] The application fails to establish these requirements (for an interim interdict): the applicant has no right to interdict the first respondent from encumbering, alienating, bonding, selling, leasing or in any way transacting or dealing with his (fractional) share in the property. The allegation of fraud is contested and I am unable to find that the alleged right has been *prima facie* established upon the application of the test in *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189-1190 and *Gool v Minister of Justice and Another* [1955] 3 All SA 115 (C). There can in any event be no harm to the applicant, because – as a matter of law – none of the perceived actions by first respondent can affect the property as a whole. It also follows that there is no balance of convenience in applicant’s favour and the question of an alternative remedy does not arise. Tellingly, the applicant does not allege that the first respondent has threatened to or has the power to do anything that will affect the property as a whole.”

[3] The central plank of applicant’s case for a *prima facie* right is that the fraction (dealing in which it seeks to interdict), was obtained by fraud.

[4] Counsel for first respondent submits that the only allegation of fraud in the founding affidavit is the following statement in paragraph 14:

“The Applicants claim that the First Respondent has fraudulently taken transfer of certain undivided shares in the property.”

This bald allegation, which is manifestly inadequate to establish the requisite *prima facie* case of fraud, is denied in paragraph 55 of the answering affidavit.

[5] Counsel for the applicant submits, however, that the court should look beyond paragraph 14 of the founding affidavit and referred to paragraph 18 of the founding affidavit where the deponent makes the following request:

*“18. I ask the Court **not** to read these voluminous annexes at this stage, as Applicants Heads of Argument will direct the Court to certain relevant passages in these papers.” [my emphasis]*

Counsel for the applicant then proceeded (as he did at the main hearing) to refer to examples from the “voluminous annexes” to bolster the allegation of fraud.

[6] The rule is stated as follows in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 324F – G:

*“Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met. See *Lipschitz and Schwarz NNO v Markowitz* 1976 (3) SA 772 (W) at 775H and *Port Nolloth Municipality v Xahalisa and Others; Luwalala and Others v Port Nolloth Municipality* 1991 (3) SA 98 (C) at 111B—C”*

[7] In my view, the applicant has not satisfied the test for leave to appeal, essentially, because another court is unlikely to find that applicant has, in its founding affidavit, established a *prima facie* case of fraud in regard to first respondent’s acquisition of ownership of the fraction. The bald allegation made in the founding affidavit cannot be bolstered by – in argument – referencing “voluminous annexes” in circumstances where the Swissborough requirements have not been satisfied.

[8] The application is dismissed with costs on Scale B.

**ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant

Adv Z Khan, instructed
by Magera Attorneys

For the First Respondent

Adv L Grobler, instructed by Joselowitz &
Andrews Attorneys