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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 027499/2024**

|     |                                 |
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| (1) | REPORTABLE: NO                  |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO                     |

04 February 2026

DATE

SIGNATURE

**IN THE MATTER BETWEEN:**

**MUZIKAYIFANI KHEHLA JOSEPH NKOSI**

**Plaintiff**

And

**OCCUPANTS OF ERF 3[...] OAKDENE EXT 1 /**

**THULISILE GLORENCE ZULU**

**First Respondent**

**UNLAWFUL OCCUPANTS OF ERF 3[...] OAKDENE EXT 1**

**Second Respondent**

**Heard: 29 April 2025**

**Delivered: This Judgment was handed down electronically by circulation to the parties' legal representatives by email and by uploading to Court-Online and release to SAFLII. The date and time for hand down is deemed to be 10:00 am on 04 February 2026.**

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**JUDGMENT**

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**GF JOUBERT AJ**

## **1. INTRODUCTION**

- 1.1. This matter concerns an application by the Plaintiff, Muzikayifani Khehla Joseph Nkosi, seeking an interdict against the First Respondent, Thulisile Glorencé Zulu, and where relevant, the Second Respondent, to prevent the Respondents from obstructing access to a property for the purposes of marketing the property for sale.
- 1.2. The Plaintiff asserts that the Respondents are unlawfully preventing estate agents and potential purchasers from accessing the property, which he intends to sell.

### **1.3. The nature of the relief sought is:**

- 1.3.1. An order interdicting the Respondents from interfering with the marketing, for selling purposes, of the property situated at 6[...] E[...] Avenue, O[...] Extension 1, Johannesburg, Gauteng Province (“the property”).
- 1.3.2. An order interdicting the Respondents from refusing access and marketing of the property by estate agents, other mandated representatives, and or prospective purchasers.
- 1.3.3. An order interdicting the Respondents from intimidating unlawful occupiers residing at the property at the Plaintiff's behest.
- 1.3.4. It is common cause that the Plaintiff is the registered owner of the property. Furthermore, the First Respondent does not dispute the Plaintiff's submission that even though the Plaintiff agreed that the First Respondent may stay in the property, the Plaintiff bought the property for purposes of marketing and selling the property at a later stage and subsequently decided to market the property for sale by inviting prospective purchasers to view the property, however, that the Respondents repeatedly refused estate agents and or other mandated representatives, and prospective purchasers, to access and view the property.

## **2. BACKGROUND**

- 2.1. The Plaintiff and Respondent's relationship began in 2004 and involved the payment of lobola and other customary rites, which the Respondent claims established a customary marriage, in terms of the Recognition of Customary Marriages Act, 120 of 1998. The Plaintiff, however, characterizes the relationship as an affair, arguing that it cannot be a valid marriage due to his existing civil marriage being concluded prior to the alleged customary marriage with the First Respondent. The Parties agree that the property in question was purchased with the involvement of the Respondent, who signed the offer to purchase, allegedly under a power of attorney from the Plaintiff. The Plaintiff denies authorizing this and asserts that the property was intended solely as an investment.
- 2.2. The Respondent has been residing in the property since its purchase and claims it as her marital home, asserting a 50% share in accordance with the natural consequences of a customary marriage in community of property.

## **3. ISSUES**

- 3.1. The Plaintiff seeks to sell the property, but the Respondents are preventing access to estate agents and potential purchasers for purposes of marketing the property, citing the First Respondent's marital rights and claims against the joint estate, as the reason for her refusal and obstruction.
- 3.2. The Plaintiff contends that the Respondents have no right in law to obstruct the marketing of the property by allowing estate agents and or other mandated representatives, and prospective purchasers, to access and view the property.
- 3.3. The clear question before the court is whether the Respondents have any right in law to obstruct the marketing of the property and refuse access to estate agents, other mandated representatives, and prospective purchasers of the property, in the instance where the Respondents are not the registered title holder. If no defensible right can,

rationality, justifiably, and reasonably be evidenced, should the relief pursued by the Plaintiff be granted?

- 3.4. The Plaintiff, as the only, lawful registered owner of the property, argued that he is merely seeking an interdict to access the premises for purposes of allowing access to the estate agents and the interested purchasers, and that at no time the Plaintiff was seeking an order that the Respondents must vacate the property.
- 3.5. Furthermore, the Plaintiff argued that he agreed that the Respondents are allowed to continue to occupy the Property, however, without interfering with the prospective marketing of the property, and specifically not to refuse or otherwise restrict, in any manner, access to estate agents, their representatives and prospective purchasers of the property.
- 3.6. Notwithstanding the offer of the Plaintiff that the Respondents may continue to stay on the property, the Respondents repeatedly refused and obstructed the Plaintiff to provide access to the estate agents, other mandated representatives, and or prospective purchasers.
- 3.7. Consequently, the Plaintiff argues that his limited real rights are unlawfully prejudiced as a direct result of the Respondents actions.

#### **4. ANALYSIS**

- 4.1. The Plaintiff and First Respondent have a long-standing relationship, which the Plaintiff characterizes as a failed affair, whilst the First Respondent claims it constitutes a valid customary marriage under the Recognition of Customary Marriages Act, 120 of 1998.
- 4.2. The property in question was acquired during their customary marriage, and the First Respondent has been residing there for a considerable time. The Plaintiff intent to market and sell the property, asserting sole ownership and denying any legal marital rights of the First Respondent over the property. The First Respondent, however, claims occupancy rights based on the purported customary marriage, which she

argues entitles her to a share of the property and a say in the marketing and sale of the property.

- 4.3. The relief pursued by the Plaintiff is an interdict limited to compelling the First Respondent, and where relevant, the Second Respondent, to refrain from any interference in respect of the marketing of the property and to furthermore refrain from any refusal of access to the property by estate agents, other mandated representatives, and or prospective purchasers.
- 4.4. The relief sought by the Plaintiff does not include an order to interdict the First Respondent from continuing to occupy and use the property or any other eviction order. In fact the relief as required in the papers clearly recognise the continues occupation and use of the property by the Respondents and does not pursue any other order to limit any lawful existing rights or benefits that would have accrued, even if the parties were to be found to be in a lawful customary marriage.
- 4.5. The Plaintiff furthermore contents that the mere fact that a person holds a right to occupy a property, be it formal or implied, which grants the person a lawful servitude right, does not confer a right in law that such a person, is equally a limited real right holder, in the same manner as the registered owner of the property.
- 4.6. Counsel for the First Respondent argued that the mere fact that the First Respondent entered into a customary marriage with the Plaintiff, confers onto her a right to interfere with the marketing of the property and the refusal of access to estate agents, other mandated representatives, and or prospective purchasers.
- 4.7. The First Respondent further contended that should the purported customary marriage be found to be valid, it allows for the matrimonial property regime applicable to a customary marriage to be to the benefit of both the Plaintiff and the First Respondent, since it should be deemed as a marriage in community of property.

4.8. The principal argument advanced by the First Respondent is that the Plaintiff may not market or cannot alienate immovable property without the consent of the other spouse.

4.9. The First Respondent further contents that in the instance that the Plaintiff is allowed to market and sell the property without her consent, it will result in a situation where the Plaintiff permits arbitrary deprivation of an immovable asset, and that this in turn will result in an asset which had formed part of the joint estate under the customary marriage, being recognised as the sole property of the spouse under whose name the asset had been registered, and the other spouse would no longer have a claim to a half-share of the asset. The First Respondent contents that this scenario is akin to unfair discrimination against the financially weaker spouse in the customary marriage.

4.10. It is this court's view that the First Respondent's contention, if found to be a valid argument may be premature, since such argument may only hold up in the instance where the merits of the validity of the customary marriage, and associated rights of the First Respondent, were argued based on merits pertaining to the actual, imminent, sale conclusion of the property, post the marketing of the Property.

4.11. However, in this instance, the merits before the court are limited to the facts pertaining to the marketing of and access to the property, and therefore this court will only consider the facts argued in the papers placed before the court.

4.12. In this regard, the First Respondent's Heads of Argument does not provide a compelling, logical, legal basis for this court to believe that the Plaintiff's claims are in any manner countered with factually correct evidence, including the citation of relevant statutes and case law and or alternative legal interpretations, which supports the First Respondents' arguments.

4.13. In contrast, the Plaintiff's Heads of Argument strongly relied on a wellstructured and rational approach, demonstrating a prima facie case for the relief sought. The

Plaintiff approach the court with an application to interdict the Respondents from refusing access to the property for purposes of the marketing of the property, and nothing more.

## **5. ORDER**

- 5.1. The court finds that the relief sought as set out by the Plaintiff, is rational, reasonable and justifiable and sufficiently demonstrates that the First Respondent's, and where relevant, The Second Respondents' actions to prevent the Plaintiff, as the registered owner of the property, from unfettered marketing and showing the property by estate agents, and or other mandated representatives, and or prospective purchasers, irrational and unlawful.
- 5.2. The First and Second Respondents be directed to make the property situated at 6[...] E[...] Avenue, O[...] Extension 1, Johannesburg, accessible to Estate Agents and or any representatives to market, access and showcase the property, and or any matter incidental to such marketing, access and showcasing the property, on dates to be provided on 48-hour notice.
- 5.3. The First and Second Respondents are interdicted from intimidating and obstructing any Estate Agents and or any representatives performing their duties to market and showcase the property, and or any matter incidental to such marketing, access and showcasing the property.
- 5.4. The Sheriff of the court is hereby authorised to take all necessary steps to give effect to this order, including but not limited to, and enlisting the services of the South African police service to ensure the execution of this order.
- 5.5. In considering the determination of costs, the general principle is that costs follow success. No proper case was made out for costs to be granted on a punitive scale. However, I am mindful of the Respondents financial constraints. The Parties are ordered to each pay their own costs of this application, on a party and party scale, including the costs consequent upon the employment of counsel.

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**GF Joubert**  
**Acting Judge of the High Court**

**Heard: 29 April 2025**

**Judgment: 04 February 2026**

**Appearances:**

For Plaintiff: Adv Gaju

Instructed by: MPA Attorneys

For Respondent: Adv Keka

Instructed by: Legal Aid South Africa