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

Case No.: | **2026-044677**

In the matter between:

MARIA ANNA DE RIDDER Applicant

and

ROSE-MARIE NELSON First Respondent

TREVOR TIFFANY NELSON Second Respondent

THE REGISTRAR OF DEEDS, CAPE TOWN Third Respondent

BARRY AND MOUTON ATTORNEYS Fourth Respondent

FRANCOIS HENRY FRANCIS Fifth Respondent

LEE-ANN PETOORS Sixth Respondent

Coram: Montzinger AJ

Heard: 12 March 2026

Delivered: 25 March 2026

Summary: Urgent application seeking interim interdictory relief – Elderly owner – transfer of immovable property to stepdaughter on a revoked power of attorney –prima facie calculated and unlawful deprivation of ownership – urgent interim interdict to preserve property and the rental income – vulnerability of applicant and need to fund frail-care – interim interdict granted

ORDER

1. The applicant's non-compliance with the rules pertaining to form, time periods and service is condoned and the matter is heard as one of urgency.
2. First Respondent is interdicted from selling, alienating, encumbering, altering, improving or otherwise dealing with the property described as Erf 6[...], Ladismith and situated at the corner of Hospital and Crafford Streets, Ladismith ("the property") held by her under Deed of Transfer Number 0[...] ("the title deed"), registered as such with the Third Respondent, either personally or through the Second Respondent.
3. The Third Respondent is interdicted from transferring the property to any third party, and is further directed to note the interdict against the property as provided for in section 3 of the Deeds Registries Act 47 of 1937.
4. Fifth and Sixth Respondent are ordered to pay all rental payments in respect of the garden flat into the trust account of Raubenheimers Incorporated, the details of which will be provided with the service of this order.

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5. The relief in paragraphs 1 - 4 above shall serve as interim relief, pending finalisation of the final relief sought in the normal course, under Part B of the notice of motion.
 6. Costs of the proceedings under Part A to stand over for adjudication when Part B of the application is heard.
 7. A copy of this order to be served by the Sheriff on all respondents.
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JUDGMENT

Montzinger AJ

Introduction

- [1] This matter served before me on the urgent roll on Thursday, 12 March 2026. The applicant sought interim relief under Part A of the notice of motion pending the determination of Part B.
- [2] All the respondents received notice of the application, including the Registrar of Deeds and the fifth and sixth respondents, the occupiers of the garden flat affected by the relief. The fourth respondent has indicated that it does not oppose the relief. No other respondent has delivered either a notice to oppose or answering papers. The matter accordingly served unopposed before me.

The facts in support of the application

- [3] The applicant is an 89-year-old woman who has been residing in the Precious Life Nursing Home in George since about July 2023. The first respondent is her

stepdaughter and the second respondent her step-son-in-law (the “Nelsons”). The applicant was the registered owner of Erf 6[...], Ladismith, situated at the corner of Hospital and Crafford Streets, Ladismith, since 2004. During January 2026 the property was transferred into the name of the first respondent, with the assistance of the second and fourth respondents, without the applicant’s knowledge or express consent and without any compensation being paid to her. The fifth and sixth respondents (the “tenants”) occupy the garden flat on the property and pay monthly rental in respect of that flat.

- [4] On the papers before me, the applicant’s mental competence and capacity to manage her affairs are well documented with medical reports and a social worker’s report. For present purposes, it suffices to record that these documents indicate material impairment in her ability to appreciate and manage her financial and legal affairs.
- [5] A Deeds Office search dated 15 October 2025 still reflected the applicant as the registered owner of Erf 6[...], Ladismith. However, a purported deed of sale in favour of the first respondent was apparently concluded on 14 October 2025 and was signed by the second respondent, ostensibly in terms of a general power of attorney granted to him by the applicant on 2 May 2024. That general power of attorney, however, had been formally revoked by the applicant on 23 September 2025, prior to the signing of the deed of sale.
- [6] Transfer of the property was subsequently registered into the name of the first respondent on 20 January 2026. The purchase price reflected in the deed of sale is R877,000.00 whereas the valuation of the property indicates a current market value in the order of approximately R2.2 million to R2.375 million. The applicant

has received no payment of the reflected purchase price, and the correspondence from the transferring attorneys suggests that the price was “*regarded as settled*” on the basis that the *Nelsons* would care for the applicant.

- [7] The conduct and modus of the *Nelsons* were further patently obvious when the information provided by the office of the Registrar of Deeds is considered. According to the Registrar’s report there was a “*lost deed*” application prior to registration. Since the applicant is in possession of the original title deed for Erf 6[...], Ladismith it meant that additional steps were required to be overcome by the *Nelsons* in order to facilitate the transfer. The *Nelsons* proceeded to procure a duplicate title deed, under the auspices of a ‘lost deed’ and effected transfer of Erf 6[...], Ladismith.

Requirements for an interim interdict

- [8] The principles applicable to interim interdicts are well established. The foundational requirements were articulated in *Setlogelo*¹ and have been consistently affirmed and refined in later authorities, including *Webster*² and *Gool*³. Under our current constitutional dispensation, these principles continue to govern the inquiry, albeit infused with constitutional values, as confirmed by the Constitutional Court in *National Treasury*⁴.

- [9] A court considering whether to grant an interim interdict must consider four requirements. The first is that the applicant must establish the existence of a *prima*

¹ *Setlogelo v Setlogelo* 1914 AD 221

² *Webster v Mitchell* 1948 (1) SA 1186 (W)

³ *Gool v Minister of Justice* 1955 (2) SA 682 (C)

⁴ *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC)

facie right, though open to some doubt. The right need not be proved on a balance of probabilities. It is sufficient if the applicant places before the court evidence which, if accepted, establishes a right deserving of protection pending final determination.

[10] The second requirement is a well-grounded apprehension of *irreparable harm* to the applicant if interim protection is not afforded. The apprehension must be objectively reasonable. The question is whether a reasonable person in the position of the applicant, confronted with the same facts, would foresee the likelihood of harm that cannot adequately be remedied by an award of damages or some other remedy at final determination. Harm is “irreparable” in this context if waiting for final relief would leave the applicant in a position that cannot meaningfully be restored.

[11] The third requirement concerns the *balance of convenience*. The court must weigh the prejudice that the applicant will suffer if interim relief is refused against the prejudice the respondent will suffer if the interdict is granted. This assessment considers the relative strength of the parties’ cases as they appear on the papers. The stronger the applicant’s prospects of final success, the less heavily the balance must tip in its favour, and conversely⁵. Where both sides invoke constitutional rights, or where the respondent alleges that the interdict will significantly impair its lawful interests, the balancing exercise must be undertaken with particular care.

[12] The fourth requirement is the *absence of a suitable alternative remedy*. An interim interdict is an extraordinary remedy and should not be granted where other adequate remedies, whether judicial or otherwise, exist to protect the applicant’s rights. The availability of other remedies is relevant to this inquiry.

⁵ *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D)

[13] Ultimately, even where all four requirements appear to be met, the court retains a *judicial discretion* whether to grant the interdict. This discretion is not unbounded. If an applicant fails to establish at least one of the requirements, the court has no discretion and relief should be refused. But where they are satisfied, the court must consider all relevant circumstances to determine whether the interdict sought is just and equitable. The requirements must not be applied mechanically; they are interrelated and must be assessed holistically in the light of the evidence as a whole.

Application of the legal requirement to the facts

[14] On the papers, the applicant has demonstrated at least a *prima facie* right to have the transfer to the first respondent set aside and the property restored to her name. She was the registered owner. The power of attorney relied upon had been revoked before the purported deed of sale was signed. Also, the price was far below market value and she received no payment. Furthermore, given her mental and cognitive state, there is a serious question whether she could lawfully and meaningfully have approved the alienation of her property.

[15] As to irreparable harm, there is a reasonable apprehension that, absent immediate relief, the property could be further alienated or encumbered, thereby permanently depriving the applicant of her asset needed to secure her care. The applicant is a vulnerable elderly person in frail care whose livelihood and ability to fund her nursing-home costs depend materially on the value of this immovable property and the rental income from the garden flat. Monetary compensation at some future

date would be an inadequate substitute if the immovable property is lost or dissipated.

[16] The balance of convenience strongly favours the grant of relief. The caveat and interdicts sought serve to preserve the *status quo* in relation to ownership and prevent dealings with the immovable property pending the determination of the relief under Part B of the notice of motion. Also, it is prudent to direct that the rental income by the tenants be paid into a trust account of an attorney rather than to the Nelsons. The prejudice to the Nelsons of being temporarily prevented from dealing with the immovable property, and of having the rental income preserved, is limited and reversible, whereas the prejudice to the applicant if relief is refused is severe and potentially irreparable.

[17] Finally, there is no adequate alternative remedy. The applicant cannot feasibly obtain equivalent protection through later damages or ordinary action proceedings, given her age, financial vulnerability and the risk of further disposition of the property in the meantime. In these circumstances, and exercising my discretion, I am satisfied that the requirements for interim relief have been met.

[18] I am not prepared at this stage of the proceedings to grant relief that has, in substance, the effect of an eviction. The relief formulated in paragraphs 2.3 and 2.4 of the notice of motion, which sought the immediate return of possession of the property to the applicant and interdicting the Nelsons from entering the property without the applicant's written consent, is in its effect indistinguishable from an eviction.

[19] Evictions from residential premises may only be ordered in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”), and then only once the procedural and substantive requirements of that statute have been duly complied with. No such case arises on these papers, and it would therefore be inappropriate to grant, under the guise of interim relief, an order that effectively evicts the Nelsons from the immovable property without compliance with PIE.

Conclusion and order

[20] In the result the following order is made:

1. The applicant’s non-compliance with the rules pertaining to form, time periods and service is condoned and the matter is heard as one of urgency.
2. First Respondent is interdicted from selling, alienating, encumbering, altering, improving or otherwise dealing with the property described as Erf 6[...], Ladismith and situated at the corner of Hospital and Crafford Streets, Ladismith (“the property”) held by her under Deed of Transfer Number 0[...] (“the title deed”), registered as such with the Third Respondent, either personally or through the Second Respondent.
3. The Third Respondent is interdicted from transferring the property to any third party, and is further directed to note the interdict against the property as provided for in section 3 of the Deeds Registries Act 47 of 1937.
4. Fifth and Sixth Respondent are ordered to pay all rental payments in respect of the garden flat into the trust account of Raubenheimers

Incorporated, the details of which will be provided with the service of this order.

5. The relief in paragraphs 1 - 4 above shall serve as interim relief, pending finalisation of the final relief sought in the normal course, under Part B of the notice of motion.
6. Costs of the proceedings under Part A to stand over for adjudication when Part B of the application is heard.
7. A copy of this order to be served by the Sheriff on all respondents.

A MONTZINGER
Acting Judge of the High Court

Appearances:

Attorneys for applicant:

Raubenheimers Inc.

Counsel for applicant:

Ms T Le Roux