



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

Case No: **2025 - 041553**

In the matter between:

ANGELA ELIZABETH RUTHVEN N.O.

Applicant

(In her capacity as Master's Representative in the
Estate of the Late Jan Jonathan Ruthven Estate
No: 0[...])

And

JONATHAN LODEWIKUS RUTHVEN

First Respondent

REMONA MATTHYS

Second Respondent

THE CITY OF CAPE TOWN

Third Respondent

MINISTER OF HUMAN SETTLEMENT

Fourth Respondent

MASTER OF HIGH COURT PRETORIA

Fifth Respondent

**THE REGISTRAR OF DEEDS, CAPE
TOWN**

Sixth Respondent

Coram: Magona-Dano AJ

Hearing Date: 27 January 2026

Delivered on : 19 March 2026 (delivered electronically)

Summary: Application proceedings-dispute of fact raised-established principles restated-refusal to dismiss the application - Declaration for correct registration of ownership of the immovable property where co-ownership was obtained through misrepresentation- the proper application of the western cape housing unit policy

ORDER

1. The deceased estate of Jan Jonathan Ruthven is declared to be the sole owner of erf 3[...] Delft in the city of Cape Town, Division Cape, Province of the Western Cape, in extent 115 square metres (“the property”).
2. The Registrar of Deeds, Cape Town is hereby directed to do all things necessary to ensure that the deceased estate of Jan Jonathan Ruthven is reflected as the sole owner of the property and to ensure that the deceased estate is reflected as the sole owner of the property in all relevant deeds and documents.
3. The Registrar of Deeds, Cape Town, must, within seven days, rectify the deed of transfer, per paragraph 2 above and on any other document in the Deeds Registry, and must additionally do all things necessary to give effect to the order in paragraph 2 above.
4. The First and Second Respondents are to pay the costs of this application on scale B.

JUDGMENT

MAGONA-DANO AJ

INTRODUCTION

[1] This is an application wherein the Applicant is seeking a declaratory order that the Estate of her late father, Mr Jan Jonathan Ruthevan (the deceased), be declared the sole owner of his immovable property, described as erf 3[...] Delft with physical address as [...] W[...] Street, the Hague, Delft (the property) which was erroneously registered in the deceased's name and that of the First Respondent.

[2] The further relief is directing the Registrar of Deeds to do all things necessary to ensure that the property is reflected as the sole property of the deceased, and now the deceased estate.

FOUNDATIONAL BACKGROUND

[3] It is common cause that the deceased is survived by three adult children. I put them in no particular order, they are:

- a. The Applicant, a daughter Angela Elizabeth Ruthven, who is also the executor of the deceased estate.
- b. A son, Jan David Ruthven (Jan), who is in support of the Applicant in this matter.
- c. A son, Jonathan Lodewikus Ruthven, who is the First Respondent in this matter.

[4] The First and Second Respondents are husband and wife, respectively, and the latter is joined in these proceedings by virtue of their marriage in community of property.

[5] The deceased died intestate on 12 January 2017 and was a divorcee, accordingly, his estate had to devolve upon his three children in equal shares, in accordance with the Intestate Succession Act 81 of 1987.

[6] The Application is opposed by the First Respondent who has filed an Answering Affidavit.

[7] The Third and Fourth Respondents, through their attorneys, filed notices to abide.

FACTUAL BACKGROUND

The Applicant's case:

[8] In 2016 and prior to his passing, the deceased was approved for a housing unit from the City of Cape Town's Department of Human Settlements plan, Delft Integrated Housing Project, a housing project wherein they build and allocated housing units to members of the community who met the criteria as set out by the City of Cape Town.

[9] The deceased became ill and informed the Applicant of having applied for a housing unit through this housing project and requested that she must follow this up.

[10] This the Applicant did and after his death and throughout the period between 2017 and 2019, the Applicant made regular visits to the City of Cape Town every Wednesday to check up on the property that was to be transferred to the deceased's estate.

[11] The property was still under construction at some stage and was not yet ready to be transferred. On 03 October 2019, the Applicant received a text message from the City of Cape Town advising her that the unit had been allocated and the key was ready for collection.

[12] On her arrival at the City of Cape Town offices, she was informed that they would not provide her with the keys unless the First Respondent was also present.

[13] She did not understand this but decided to comply and arrangements were made for the First Respondent who resided in Johannesburg to travel to Cape Town to collect the key.

[14] On receipt of the key, the First Respondent returned to Johannesburg.

[15] The Applicant moved in the housing unit and has been living there for several years now. To the Applicant, it has always been the intention of her father that after he fell ill, because she was the one who was looking after him and cared for him, she must ensure that the (deceased's) family received the benefit of the house, that he had been waiting for.

[16] On 05 February 2023, the First Respondent relocated from Johannesburg to Cape Town. Both the First and Second Respondents now live with the Applicant at the property as well as their three children and two grandchildren.

[17] There have been numerous domestic conflicts which made their living conditions untenable. As a result, the Applicant resolved and simply requested that the First Respondent pay her, her share of the property where she would then move out.

[18] The First Respondent refused to do so and warned her that the property was now actually his house.

[19] It was based on these utterances and his refusal to pay her share of the property that she started to investigate and made inquiries at the municipal's offices in Kuilsrivier about the property. She was provided with relevant documents and information on it.

[20] She became aware that the property that was allocated to the deceased was transferred in half-share to the deceased estate and the remaining half-share was transferred to the First Respondent.

[21] On further investigation, Applicant further discovered that the First Respondent was a co-applicant for the housing unit. He was incorrectly identified as the spouse of the deceased in the application form that was completed at the Department of Human Settlement for the Housing Unit. As a result of this, the deceased and First Respondent became co-owners of the property, as also reflected in the Title Deed.

[22] To the Applicant, the First Respondent and the Second Respondent were aware that this was an error because the former was a son and not a spouse to his father, the deceased. Further they have both taken advantage of this error to the detriment and prejudice of everyone else.

[23] The Applicant, as she became concerned continued with her investigation, and looked into the deceased's estate affairs. She ended up having to make several trips to Pretoria to attend at the Master's office, where the estate had been apparently lodged by the First Respondent as the executor. The Applicant spent a lot of money traveling to and from Pretoria several times doing her investigation.

[24] Applicant further discovered that her signature on the executor's nomination form had been forged nominating the First Respondent. She found this very curious because she is aware that the First Respondent cannot read and write. She then wondered who might have assisted him with such forgery and had her own suspicions, which included the second respondent and perhaps their attorney then.

[25] The Applicant also discovered that in terms of the Liquidation and Distribution account, the three surviving children of the deceased were each to inherit a third of his estate, and she was entitled to R7,604.36. She inquired at the offices of the executor's agents and was provided with proof of payment in respect of the monies to the heirs of the estate, showing that her share was paid into the personal account of the First Respondent. The Applicant also had her suspicions of how this could have occurred which would have included the First Respondent's attorney and also their mother.

[26] These monies which formed part of her share of the inheritance from the deceased is still owed to the Applicant. Despite her requests, First Respondent has failed to pay over her share of cash.

[27] On 27 November 2023, through her attorneys, the Applicant wrote to the First Respondent informing him what she had discovered, that firstly she was not a party to the nomination of him as the executor of the estate, further that she had not received the payment of the cash portion of the estate. She further offered to purchase his half share of the property and requested a response from him within 14 days, failing which she would have her attorneys write to the Master's office to rescind his nomination as an executor. There was no response.

[28] On 20 February 2024, through her attorneys, the Applicant wrote to the offices of the Master Pretoria requesting the executor of the estate, who is the First Respondent, to be removed from his appointment and that he be substituted by her on the grounds that he had been acting in a manner which adversely affected the interests of the estate.

[29] On 02 April 2024 and on 03 May 2024, the Applicant, through her attorneys, wrote to the Master again requesting their urgent assistance to prevent the sale of the estate's half share because the First Respondent had threatened her that he was proceeding with the sale of the immovable property's half share due to her conduct of investigating the aforesaid, especially regarding the immovable property.

[30] In a sudden change of events the First Respondent was forced to resign as an executor and on 28 October 2024, the Master granted Letters of Authority in the Applicant's favour. The Applicant now is an executor of the deceased's estate.

[31] To the Applicant, currently the main focus is on the proper registration of the immovable property to the deceased estate because the registration of the First Respondent as a co-owner of the immovable property has been erroneous as he was not a spouse as reflected on the application form for the housing unit.

[32] The continued conduct of the First Respondent in alienating the remaining heirs from their rightful share of the property has to be stopped, that all the heirs remain prejudiced under these circumstances whilst the First Respondent is unjustifiably benefiting from the estate, hence this application.

The First and Second Respondents' case

[33] According the First Respondent, he acquired the property after the deceased and him jointly applied for a housing unit because they were both single backyard dwellers and were unemployed. He denies that he posed as the spouse when the application was lodged.

[34] He further avers that on the deceased's passing, the property was allocated to them and he was the one that furnished the Third Respondent with a copy of the death certificate when it was requested. At the time, the Applicant, who is married, resided with her husband in Rylands, Western Cape, and was not involved in any step in the application process or any other process that needed to be done for the allocation of the property.

[35] That it is not true that the Applicant took care of the deceased because she was not around when they applied for the housing unit when the deceased became sick and sadly passed away.

[36] Subsequent to the deceased's passing, First Respondent briefly lived with his mother in Johannesburg since he was destitute and mourning the death of his father. It was at that stage that a meeting was called between his siblings including him, their mother and a legal representative where it was agreed that he be appointed the executor of his late father's estate. Part of his duties included having to claim and distribute the pension payout of the deceased where the mother would receive her half share according to the divorce order, with the other half to be distributed amongst the siblings.

[37] The First Respondent also confirmed that he indeed received an SMS to attend to the offices of the Third Respondent but had difficulty with the housing being allocated to him since the co-applicant was no longer alive and he was advised that he will then receive a unit after correction of the application details.

[38] He further received a second SMS where the Applicant was also contacted after he gave to the Third Respondent her number as an alternate contact. They then attended to the offices of the Third Respondent's where a unit was allocated, and he also attended a meeting where it was explained what his rights and obligations to the unit were. The First Respondent also confirms that he has tried everything necessary to remove the deceased's name as a co-applicant before receiving a key to the property and he eventually occupied the property alone.

[39] That at the time, the Applicant was living with her spouse and his family in Rylands to whom she had been married to some 17 years. First Respondent avers that he attended the offices of the Third Respondent on numerous occasions to query regarding why the deceased was still the co-owner of the property which was allocated to him. He denies that he has not been honest with his siblings.

[40] He further denies having committed any fraud or misrepresented the circumstances on the application form. He met all the criteria and qualified for a housing unit on his own. Given that his personal circumstances allowed it, he was entitled to own the property all by himself now.

[41] The Third Respondent failed to remove the deceased's name as the co-applicant. He further averred that he has since gotten married to the second respondent and her name is changed to Ramona Ruthven and that, by the way the Applicant's name was also changed to Adila Gafoor since converting to Islam.

[42] He further avers that anything where his mother or her legal representatives are mentioned in the founding papers he cannot answer thereto because they ought to have been joined in this application for them to come and speak for themselves.

[43] First Respondent vehemently denies that he posed as the spouse when completing and lodging the application for a housing unit with his father, the deceased.

[44] That regarding the share of the pension of the deceased, he never gave an instruction that money that was not due to him be paid into his personal bank account, those people who have paid the pension payout into his personal account were not cited or joined as persons of interest in this application so that they can come and verify the correctness thereof.

[45] Further he denies the allegations made that he was involved in the forging of the Applicant's signature nominating him as an Executor.

[46] He disputes that the Applicant resided with the deceased, because he was the one that took care of their late father. At the time Applicant had been living with her husband and his family.

[47] To the First Respondent, the Applicant is merely pursuing this matter because she does not qualify for a housing unit as she is employed. This court should declare the sole ownership of the property to him and the application be dismissed with costs.

[48] In reply, the Applicant averred as follows:

- a. the First Respondent is incorrect to thinking that once the property is transferred to the deceased estate and sold, it would prejudice him that he would not be in a position to qualify for housing having been allocated a unit before.
- b. That he actually did apply for a housing unit on the 3rd of April 2023, which is something that he never disclosed to this court, that this is a sign that he truly believed that he was not a co-owner of the property, something that goes against his version that he's bringing to this court.
- c. Further submission was that the First Respondent was well aware that he and the deceased were eligible to apply together as co-applicants and thus he was not lawfully entitled to the property.
- d. That no father and son or daughters could be co-applicants in the housing unit project, the terms of the housing policy are clear on this.
- e. The First Respondent continued with his deceptive ways in that whilst a letter from the Third Respondent dated 30 October 2014 was only addressed to the deceased (he was still alive) inviting him and his spouse or partner to attend a workshop relating to the housing project. There was no mention of the First Respondent.

- f. Surprisingly, a second letter which was dated 13 May 2016 was also sent. In this letter was now addressed to both the deceased as well as the First Respondent, inviting the deceased as well as his spouse to attend an appointment to formalise the allocation of the housing unit.
- g. The question is where was he on the letter of 2014? To the Applicant this was suspicious and there are a lot of probabilities that the First Respondent did not apply with the deceased on the same date but at some later stage possibly. After the first invitation saying that the deceased was being invited to bring along a spouse or a cohabiting partner First Respondent probably went under the guise of being a spouse or cohabiting partner. Hence, his name is appearing on the second invitation from the Third Respondent.
- h. Applicant also annexed confirmatory affidavits from his brother as well as a neighbour confirming that it was the Applicant who lived with the deceased up until his demise.
- i. She cared for him while she was ill until his passing. Applicant further proved that she was the one who reported the death to the home affairs.
- j. She was the one who reported the death, identified the body and obtained his death certificate. This was proven by the notice of death that was signed by her and attached to the replying papers.
- k. Therefore, this was proof to that the First Respondent was not being truthful before this court. Hence, the submissions that First Respondent should not be trusted. That further First Respondent is not being honest with the court claiming that he has been living in Cape Town all along with the deceased and that he has always been around the City of Cape Town.
- l. Further this is shown by the fact that the First Respondent went to the Master's office in Pretoria reporting the father's death a few months

later. That if his version is to be believed, why would he, if he was resident in Cape Town, be travelling to Pretoria to report the death of his father? To the Applicant, this is to show that he was living in Johannesburg at the time and resided with his brother before he permanently relocated to Cape Town in February 2023 only.

- m. Further, that the First Respondent's undertaking an acceptance of the master's directions, he further committed another fraud stating that his father and him were resident in Krugersdorp, which clearly shows that this was an untruth.
- n. Even the brother Jan has confirmed what the Applicant avers, that the First Respondent's conduct has been prejudicing the siblings for his own selfish benefit and the deceased would have been appalled by this, the way he has been handling the issue relating to his estate.
- o. That another indication of First Respondent's untruthfulness is reflected in him stating at one stage that it was him who provided the Applicant's contact details to the Third Respondent. According to the Applicant, she's the one who gave her contact details to Third Respondent at the behest of the deceased at the time when he was alive because she was following up all the time constantly regarding his application.
- p. That such a submission by the Third Respondent does not make sense, especially when he also states that the Applicant was someone who was not around, who did not look after the deceased. Why would he then be the one who gives contact details to the Third Respondent? And most importantly, why would he do so if he was a co-applicant legally?

ISSUES IN DISPUTE

[49] Whether there is true dispute of fact raised that make out a defence to the Applicant's claim or are such not *bona fide* and stand to be rejected.

[50] Whether the First Respondent was legally qualified to join his father to apply for the housing unit under the project as a co-owner; if not

[51] Whether First Respondent made an error or intentionally put his name in the application form meant for a spouse to ultimately hold half ownership of the property; if so,

[52] Whether the whole immovable property be declared belonging to the estate of the deceased and First Respondent's name be removed from the Title Deed as claimed by the Applicant; or

LEGAL FRAMEWORK

Dispute of fact

[53] Rule 6(5)(g) of the Uniform Rules of this court states as follows:

‘Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.’

[54] In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) the court held that disputes of fact are ordinarily resolved in favour

of the respondent's version. However, as explained in *Wightman t/a JW Construction v Headfour*¹ a respondent must seriously and unambiguously engage with the facts alleged. Bare or bald denials do not suffice. Where the alleged dispute is not real, genuine or bona fide, a court is entitled to reject such denials and determine the matter on the papers without referring it to oral evidence. (underlining my emphasis).

[55] Further in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another supra*, in assessing whether a dispute of fact on the papers has been raised genuinely, the court does not go into the merits of a respondent's defence. It merely considers whether the respondent's averments, if they were to be established in a trial, would make out a defence to the Applicant's claim. It also assesses whether the respondent's averments making out a *prima facie* defence are made *bona fide*. The respondent's *bona fides* are usually assessed with regard to the verisimilitude of the respondent's case on paper, something ordinarily demonstrated by the deponent seriously and unambiguously engaging with the issues sought to be placed in dispute.²

(underlining my emphasis)

Fraud in agreements

[56] It has been held that "fraud unravels all subsequent transactions even ... a subsequent sale to a bona fide purchaser". In *Firststrand Bank Ltd t/a Rand Merchant Bank and Another v The Master of the High Court, Cape Town*³, the Court after considering the fraudulent misrepresentation made by the attorney to the Master of the High Court said:

¹ [2008] ZASCA 6; 2008 (3) SA 371 (SCA)

² at para 13

³ A reported matter with Case No:679/13

"[20] It is trite that the effect of fraud is far-reaching. In *Farley (Aust) Pty Ltd v JR Alexander & Sons (Qld) Pty Ltd* [1946] HCA 29; (1946) 75 CLR 487 the High Court of Australia, per Williams J, said this:

'Fraud is conduct which vitiates every transaction known to the law. It even vitiates a judgment of the Court. It is an insidious disease, and if clearly proved spreads to and infects the whole transaction.'

[21] And in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 (CA) at 712 one finds Lord Denning's well-known remarks:

'No court on this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved, but once it is proved, it vitiates judgments, contracts and all transactions whatsoever.

[22] In South Africa, the 'insidious effect of fraud permeates the entire legal system'. It renders contracts voidable. It is one of the elements of delictual liability. It constitutes a crime. Fraud excludes the effect of an ouster clause in the legislation. See *Narainsamy v Principal Immigration Officer* 1923 AD 673 at 675. It also nullifies a contractual exemption clause which purports to exclude a party from the consequences of fraudulent conduct. See *Wells v SA Alumnite* 1927 AD 69 at 72." Footnotes excluded)

[57] Accordingly, any benefit obtained through fraudulent misrepresentation cannot be permitted to stand⁴.

DISCUSSION AND ANALYSIS

Submissions for the Applicant

The Immovable Property

[58] Ms Essa for the Applicant made the following submissions:

⁴ See also *Mokweni and Others v Plaatjies and Others Appeal* (A178/2022) ZAWCHC 266 (26 October 2023)

[59] The First Respondent refuses to co-operate with his co-heirs or siblings and they remain prejudiced from attaining their lawful share in the estate of their father.

[60] The First Respondent seeks to convince this court that it was legal of him to jointly apply for a property with the deceased.

[61] It was not even possible as the City of Cape Town does not allow this. Applicants must be spouses or persons co-habiting as partners. One may not apply for a housing unit as father and son or brother and sister.

[62] The First Respondent, despite attempting to aver otherwise to this Court, was well aware that this was the case in that he has since lodged also made his own Housing Unit Application on 3 April 2023. Had the First Respondent truly believed that he was lawfully entitled to the housing unit at issue which the deceased applied for, he would not have lodged such an application.

[63] To Ms Essa this was a clear indication that there was never any intention for any such “joint application” to be submitted to the City of Cape Town by the deceased.

[64] To make matters worse for the First Respondent, the notes taken by the capturer of the City of Cape Town indicate and prove that the First Respondent was holding himself out as a “spouse” if one has regard to Annexure “**AER5**”, page 5 of the initial application form. Reference is made to “employment history from labour of the co- habiting partner attached” and “Affidavit signed by Spouse” which is clear indication that he acted as one in a relationship with the deceased.

[65] The First Respondent also seeks to create the impression that it was him who cared for the deceased and not the Applicant whereas the fact is it was the Applicant as she also identified the body of the deceased, reported the death to Home Affairs and obtained the death certificate.

[66] The version of the First Respondent is vague and not supported by any form of evidence. The Applicant's version on the other hand is supported by documentary evidence and a confirmatory affidavit by Jan (their brother).

[67] Ms Essa further submitted that the First Respondent appears to be under the impression that he is entitled to the property whilst he is not.

[68] The purpose of these proceedings is to restore the half share of the property which was erroneously transferred to the First Respondent wholly to the deceased estate, whereafter the property may be sold and proceeds divided equally between all three heirs. The First Respondent's obstructive conduct in this regard is prejudicing the other heirs from what is due to them in terms of their late father's estate. It is also obstructing her as the executor from finalizing the estate fairly.

[69] Attached to the Heads of Argument was a City of Cape Town's official resource document where the criteria is clear in terms of who qualifies for a unit. It proves that the First Respondent and the deceased could never have been accepted as co-Applicants, had the truth been told.

[70] Therefore, the recording and subsequent transfer of the housing unit reflecting the Third Respondent as co-owner was both erroneous and subject to rectification.

[71] Ms Essa further submitted that the version of the First Respondent does not raise any dispute of fact and falls to be rejected as being far-fetched, unsupported by credible evidence, it is misleading, dishonest, and wholly untenable.

[72] Further that it is clear from the facts of the matter that the underlying cause of the half share of the property being transferred to the First Respondent is vitiated by fraud and error therefore stands to be corrected.

Submissions for First and Second Respondents

[73] Ms Oosthuizen submitted that the papers in this matter are riddled with factual disputes that render the matter needing to be dismissed and they are detailed as follows:

- a. According to the Applicant, the deceased had qualified for a housing unit before his passing in 2016. The Applicant states, however, that when the housing unit had finally been allocated to the deceased in 2019, the Third Respondent was not willing to hand over the key for the unit to her. When she had arrived to collect the key, she was allegedly informed that the “co-applicant” had to be present to collect the key. First Respondent has a different version to how the key was handed over.
- b. He states that when the unit had initially been allocated in 2019, he went to collect the key to the unit with the Applicant. However, despite his presence, the Third Respondent would not hand over the key to him, because the co-applicant (the deceased) had to be present too. The First Respondent was then required to hand in the deceased’s death certificate for the housing application to be updated.

c. After conducting some enquiries, the Applicant states that she had discovered that the property had been registered in both the deceased and the First Respondent's names and that this was due to the First Respondent having misrepresented himself as the deceased's spouse when the unit was applied for.

d. To the First Respondent, he and the deceased jointly applied for the allocation of a housing unit. According to him, they both qualified for such allocation as, at the time, they were both single, unemployed and backyard dwellers.

e. The First Respondent denies that he had misrepresented himself. He states that he had informed the Third Respondent that he was the deceased's son and, subsequently, that the deceased had passed away.

f. Ms Oosthuizen further submitted that annexure "AER5" to the founding papers is not clearly in support of either version. On page 1 thereof, the deceased is indicated as being single, but co-habiting. This would indicate that the Third Respondent had not been told that the First Respondent was his spouse. However, the First Respondent's details were captured in the section meant for a spouse's details.

g. It is true that, on page 5 of that same annexure, reference is made to an affidavit signed by a "spouse". However, on the same page it is indicated that the employment history of the "*co-habiting partner*" had been attached to the application.

h. The other aspect that casts doubt on the Applicant's version, however, is her allegation that she had initially been willing to purchase the First Respondent's half share of the property. It was only after the First Respondent had not complied with this request, that the Applicant decided to bring this application. It does not make sense for the Applicant to offer money in exchange for the First Respondent's share in the

property in circumstances where she genuinely believes that he was never entitled thereto.

i. That therefore the facts that go to the very root of this matter are in dispute and, the Applicant has not established that she is entitled to the relief that she seeks on a balance of probabilities. The proceedings ought to be dismissed.

j. Ms Oosthuizen further submitted that the First Respondent's denial of the allegations against him cannot be characterised as palpably implausible or far-fetched. The documentary evidence of the Applicant's does not favour either party's version. In the circumstances, the submissions were that the exception to the general rule regarding factual disputes finds no application in this matter.

Analysis

Dispute of fact

[74] The case for the First Respondent is clearly raising what he refers to as dispute of fact seeking that the application be dismissed. It is best I begin with this issue.

[75] It is well established that not every denial in motion proceedings creates a genuine dispute of fact warranting referral to oral evidence.

- a. From what I could read from the alleged dispute of fact the following issues are raised which can be summarised as follows:
- b. Did the First Respondent apply for the housing unit with his father the deceased?
- c. Did the First Respondent err/misrepresent himself on the application form?

- d. Did the First Respondent qualify for the housing unit by virtue of being single and backyard dwellers?
- e. Did the alternate use of the words spouse/cohabitating partner have any effect to the issuing of the housing unit?
- f. Are there any other factors taken into account to support either party's case.
- g. I turn now to test these to the facts before this Court.

Did the Third Respondent apply for a housing unit with his father?

[76] It is not disputed that First Respondent completed the application form for a housing unit with his father the deceased for one housing unit to be allocated to them.

[77] It may be doubtful if he applied at the same time as the father or later on the same day or days after he added his name. Irrespective, in my view the evidence shows that the First Respondent completed the application form as a co-applicant, completed the form under the "spouse" section or as a co-habitant.

Did the First Respondent misrepresent the true facts to the Third Respondent in order to benefit a housing unit with his father as a co-applicant or was it a mere error?

[78] Ms Essa referred me to the application form highlighting areas where the word spouse was glaring on the form but not a single one was scratched out. No evidence that First Respondent informed the Third Respondent of the blood relations he had with the main Applicant.

[79] Ms Oosthuizen once more indicated that this is one of the areas where facts are in dispute hence the application ought to be dismissed so the issues can be dealt with in a trial court. First Respondent denies he committed misrepresentation and claim to have informed the Third Respondent that he was a son to the main Applicant.

[80] I have analysed and note that the application form dated 15 February 2016 does clearly reflect that the deceased was the main Applicant, and the First Respondent's name captured under the heading "Spouse Details". First Respondent's name is further entered on several other areas where the word "spouse" was used in particular under the following headings:

- a. "Spouse Details" (his name is entered as the spouse; under
- b. "Population Register Information" (his name is entered as being in a relationship with the deceased as a spouse); under
- c. "Deeds Information" his name appears under relationship as a spouse.

[81] First Respondent's identity number further appears as a "spouse" under the headings:

- a. "NHSDB Information";
- b. "Persal Information";
- c. "UIF Information";
- d. "Pension Information".

[82] According to the status history information which forms part of the application process it is reflected that on 22 February 2016 after the application form went through various verification processes, it was approved.

[83] Further evidence shows there was an affidavit that was signed by a ‘spouse’ of the Applicant (the deceased) and the employment history from labour of the “co-habiting partner” attached. Whilst the mentioned affidavit did not form part of the papers before me the mention of it together with all stated above clearly shows that the application had an Applicant (the deceased) and his spouse or cohabiting partner.

[84] Further in the replying papers, Applicant showed that two correspondences, dated 30 October 2014 and 13 May 2016 respectively, were received from the Third Respondent addressed for the deceased’s attention at the time. In the former correspondence, it was addressed to the deceased alone, but the latter correspondence, it was now addressed to him and a spouse. It was on the latter correspondence that the Third Respondent was included and mentioned as a spouse once more. First Respondent did not even disclose this information in his papers because he knows he was referred to as a spouse to the deceased.

[85] There is no evidence that the First Respondent altered the word “spouse” to present himself as a son or told Third Respondent officials he was not a spouse or in a cohabitation relationship with the deceased. Bare allegations are insufficient to create a factual dispute, and he has not provided supporting evidence in his affidavit for the Court’s assessment.

[86] In my view it cannot be seriously denied that First Respondent was aware of all the above, that the application form he completed was meant and marked for a spouse of the main applicant. He completed it as such and never showed proof that he corrected or disclosed to the Third Respondent that he was a son. In that regard I find that the First Respondent did apply with his father as a

spouse and therefore misrepresented the true facts. The defence raised is therefore not a *bona fide* defence when considering the totality of his case.

Was First Respondent legible to be a co-applicant and therefore keep the half share of the housing unit?

[87] Ms Essa submitted that the First Respondent certainly could not be a co - applicant because he did not fit the criteria in that he was a son to the deceased - the main Applicant. This is why Applicant claims that he misrepresented to the Third Respondent or there was an error made.

[88] She further submitted that the Third Respondent knew of his wrongful conduct, that he can never be a co-applicant and co-owner with his father in a housing unit application and allocation. This was displayed by him turning around and applying for his own housing unit in April 2023 prior to being married. This is something he did not mention in his answering papers.

[89] Ms Oosthuizen argued repeating that the First Respondent never completed the form as a spouse, he did tell the Third Respondent that he was a son. That it was one of these factors that bring in dispute of fact and the matter ought to be referred for oral evidence or be dismissed.

[90] Now, I address this issue to clarify that even if, hypothetically, there is a factual dispute about his intentions when filling out the form, his argument is that he completed it as a son and informed the Third Respondent. It is crucial to examine whether such a defence would be legally acceptable in any circumstance (see *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* supra).

[91] The definition of an “Applicant” and “Beneficiary” as contained in the revised “allocation policy housing opportunity” policy number 11969 of 2023 is as follows:

“**Applicant**” means a person, together with his /her spouse and listed dependants (if any), who has registered their housing need on the City’s Housing Needs Register.

“**Beneficiary**” means an Applicant , together with spouse/partner and listed dependants (if any), who was selected for a housing project in accordance with the City’s Allocation Policy: Housing Opportunities and was approved by the provincial Department of Human Settlements and registered on HSS for a Housing Subsidy.’(my emphasis)

[92] The First Respondent does not dispute that he applied together with his father as a co-applicant, as mentioned above. Even if we were to accept his version for the sake of argument, the result remains fair: he simply did not qualify to be a co-applicant with his own father, regardless.

[93] The 2015 housing policy was revised as quoted above the definition of those entitled to apply for a housing unit can never change or it would cause disrepute to the housing unit project’s purpose. In any case there was no evidence contrary to who the intended beneficiaries of the housing unit project were meant to be over the years.

[94] First Respondent should have (though it was shown he did so later on) completed the form and applied for his own housing unit independently. There is no evidence to show that he did so at the time or at any other time prior to the registration and issuing of the housing unit at issue to himself as a spouse/cohabiting partner to his deceased father.

Did the alternate use of the words spouse/cohabiting partner have any effect to the issuing of the housing unit?

[95] The alternate use of the word spouse/cohabiting partner on the form does not take away the fact that the co-applicant (First Respondent) posed as someone who was in a relationship with the main spouse-both these kinds of relationships do qualify to become co-applicants. The First Respondent was neither of these but posed as one.

[96] Therefore, I find that the First Respondent was not eligible to apply as a co-applicant with the deceased for the housing unit. This argument lacks credibility and is not supported by law, so it would not succeed at trial. As such, postponing the outcome is unnecessary.

Other relevant factors taken into account

[97] As I conclude, I should note that I observed potential dishonesty in the First Respondent's affidavit across the documents before me, including some examples backed by the Applicant's evidence, such as the following:

- a. First Respondent claimed responsibility for reporting the deceased's death; however, the Applicant provided evidence which included, the notice of death form attached to the replying papers, demonstrating that she was the actual person who reported the death, thereby refuting his assertion.
- b. The First Respondent asserts that he resided in Cape Town with his father until the father's passing. However, the First Respondent's brother, Mr. Jan David Ruthven, and their neighbour, Ms. Lillian Elizabeth of Eisleben, Cape Town, have submitted confirmatory affidavits contradicting this claim. Their statements support and affirm the

Applicant's account regarding residency with the deceased up to the time of their father's death.

c. Evidence shows that First Respondent was not residing in Cape Town with his father during the time of his father's death, he reported the death of his father at the Pretoria Master's Office, completing a Form MB.48 (an undertaking and acceptance of the Master's Directives) where he dishonestly stipulated there that the deceased resided in the Krugersdorp district. Additionally, he indicated that his own residence was in Mansieville, Krugersdorp.

d. First Respondent further failed to disclose that he has since applied for his own housing unit in 2023, it is through the Applicant's investigation that brought this to the fore as encapsulated in the replying papers, since he asserted that she was doing all this closing opportunities for him to receive any housing unit.

[98] In this regard, I do agree with Ms. Essa's assertion that First Respondent's intentions were obviously to seize the deceased's housing unit for himself at the expense of his siblings. I would add, by all means.

[99] As if this was not enough, the First Respondent took the Applicant's monetary share of the inheritance, as shown in the Liquidation & Distribution account. Each child was to receive a third of the estate, but the Applicant's portion was paid to the Third Respondent by the Executor's agents. The First Respondent did not address this in his answering affidavit and appeared to shift blame, although records indicate the funds went to his own account, with only one other sibling (Jan) receiving their direct payment. As Executor, he was aware of each share's allocation.

[100] Based on all the above it is easier for this Court to accept that there probably was forgery of the Applicant's signature appointing the First Respondent as an executor in Pretoria, hence the First Respondent could not even protect himself and the position when he was challenged by the Applicant.

[101] Most glaring to the First Respondent's case there are no confirmatory affidavits from members of his family to confirm his version of events; not a shred of evidence to support all his assertions; his affidavit remains bald and sketchy remaining devoid of substance.

[102] All of the aforementioned, in my opinion, demonstrate that First Respondent is prone to acting dishonestly for his own gain. Because he employed the same strategies to get his name on the immovable property's title deed, I believe that he should not profit from such behaviour.

[103] In any case, the housing policy is explicit about who can be a co-applicant and most definitely not a child of the primary Applicant (who was never designated as a dependant). I have addressed this point above, even if one were to accept the First Respondent's (rejected) averments.

[104] The above deals with the main points at issue. The facts clearly show that the defences mentioned above are unsustainable and the disputes brought are not legitimate. These defences do not really address the facts or the relief requested *in casu*, and it seems that their main purpose has been to postpone the application. They are rejected because in my view they are not sincere.

[105] In that regard the application stands to succeed.

Costs

[106] The awarding of costs still remains in the discretion of the Court. Courts have broad, judicial discretion in awarding costs, generally following the principle that the successful party is entitled to their costs. The approach is flexible, focusing on fairness, the conduct of the parties, and the nature of the litigation.

[107] As was held in *Kruger Bros and Wasserman v Ruskin*⁵, Innes CJ said:

‘The rule of our law is that all costs – unless expressly otherwise enacted – are in the discretion of the judge. His discretion must be judicially exercised, but it cannot be challenged, taken alone and apart from the main order, without his permission.’

[108] Even the rule that costs follow the event is subject to this overriding principle.⁶ In addition, the general rule is that the costs follow the events. The successful party should be awarded his/her costs.⁷

[109] In this instance, the Applicant has been successful as against the First and Second Respondents. I could find no reason why this Court should not apply its discretion and make a costs order against these Respondents.

CONCLUSION

[110] In that regard the application stands to succeed, and the following order from the draft order prepared by the Applicant is hereby granted.

⁵ 1918 AD 63 at 69; See also *Intercontinental Export (Pty) Ltd v Fowles* 1992 (2) SA 1045 (SCA) at 1055 F - G

⁶ *Union Government (Minister of Railways and Harbours) v Heiberg* 1919 AD 477 See *Unimark Distributors (Pty) Ltd v Erf 94 Silverton Day (Pty) Ltd* 2003 (1) SA 204 (T) at 215 E – F

⁷ *Pelser v Levy* 1905 TS 466 at 469; *South African Association Personal Injury Lawyers v Heath* 2001 (1) SA 883 (CC) 912; *Gauteng Provincial Legislature v Kilian* 2001 (2) SA 68 (SCA) 76 G - I

- a. The deceased estate of Jan Jonathan Ruthven is declared to be the sole owner of erf 3[...] Delft in the city of Cape Town, Division Cape, Province of the Western Cape, in extent 115 square metres (“the property”).
- b. The Registrar of Deeds, Cape Town is hereby directed to do all things necessary to ensure that the deceased estate of Jan Jonathan Ruthven is reflected as the sole owner of the property and to ensure that the deceased estate is reflected as the sole owner of the property in all relevant deeds and documents.
- c. The Registrar of Deeds, Cape Town, must, within seven days, rectify the deed of transfer, per paragraph 2 above and on any other document in the Deeds Registry, and must additionally do all things necessary to give effect to the order in paragraph 2 above.
- d. The First and Second Respondents are to pay the costs of this application and costs of Counsel on scale B.

P MAGONA-DANO
Acting Judge of the High Court

Appearances

For Applicant: Adv N. Essa

Instructed by: Parker Attorneys and Conveyancers

For respondent: Adv A. Oosthuizen

Instructed by: BDP Attorneys Inc.