

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Case No: 124729/2024

Reportable: No

Of interest to other Judges: No Revised: No

SIGNATURE

Date: 29 April 2026

In the matter between:

GETRUDE BATHIBILE MAWELA

First Applicant

DORAH DIKELEDI MOTHIBA

Second Applicant

and

CAMEL RAMPHELE MASILELA

1st Respondent

GRACIA MOTEPE

2nd Respondent

DICK AND SUE JOLEEN ESTATE AGENCY

3rd Respondent

JUDGEMENT

MOOKI J

- 1 The applicants seek an order that a bank account of the first respondent be “frozen” and that the second and third respondents be ordered to disclose bank accounts into which monies from the first respondent’s trust account were paid into. Counsel for the applicants informed the court that the

applicants no longer seek relief against the third respondent. The second respondent opposes the application.

- 2 The first respondent is a legal practitioner. He conducts practice as “CM Masilela Attorneys”. The second respondent is an estate agent, employed by the third respondent.
- 3 The applicants say they seek to preserve monies embezzled by the respondents, by placing a hold on the bank account of the first respondent. The applicants paid monies into the first respondent’s trust account, as payments for certain immovable properties being sold to the applicants. The applicants contend that there were, in fact, no properties for sale and that the first and second respondents engaged in a scheme to swindle the public.
- 4 The first applicant became interested in a property that was listed by an estate agency called “Cyrus Property Brokers”. One Tshepo Zwane was the agent with whom the first applicant had dealings. Tshepo Zwane arranged for the first applicant to call at the offices of the first respondent, where the first applicant was given an offer to purchase. The first applicant made payments totaling R350 000,00 into the first respondent’s trust account. Tshepo Zwane vanished after the first applicant made the payments. The immovable property that was the subject of the payments was never made-over to the first applicant.
- 5 The second respondent stated that the property was being sold by a Mr Kutumela, who agreed to the second respondent listing the property on his behalf. The second applicant, according to the second respondent,

approached the second respondent and expressed an interest in the property. This resulted in the second applicant and the second respondent meeting with Mr Kutumela. Mr Kutumela then informed the second respondent and the second applicant that a Mr Masilela was his attorney, responsible for the sale. Mr Kutumela wanted his attorney to consider the offer to purchase which the second respondent had given to the second applicant.

- 6 The second respondent contends that he did not know the first respondent before the second respondent's dealings with the second applicant. The second applicant and the second respondent went to the offices of Mr Masilela. This followed Mr Kutumela being said to have stated that Mr Masilela was his preferred attorney. Mr Masilela is said to have given the second applicant a different offer to purchase during this meeting. The second respondent says he did not examine the second offer to purchase. He was however assured that he would still receive his commission in the amount of R35,000.00. The second respondent says that he later made enquiries at the Legal Practice Council, which confirmed Mr Masilela's trust account details and that Mr Masilela had a fidelity fund certificate.
- 7 The second applicant, following the meeting referred to above, paid the amount of R430 000.00 into the first respondent's trust account. The property was never transferred to her. She has not received her money back.
- 8 The second respondent averred that the first respondent advised the second respondent that an impersonator of his met with the second

respondent and the second applicant at a meeting during which the second applicant was given the first respondent's trust account details. This was after the second applicant started making enquiries about the property which she had paid for. The second respondent says that he was confused on hearing this, and requested the first respondent to produce identification. The first respondent produced his South African identity document, which seemed genuine to the second respondent.

- 9 The second respondent told a fantastical tale in saying he did not know the first respondent; including that the first respondent was not the person who gave the second applicant his trust account details. The second respondent would have the Court accept that he met "the real" Mr Masilela for the first time as set out in his answering affidavit. This fantastical account begs several basic questions, including why the "real" Mr Masilela did nothing on knowing of a person impersonating him (i.e. Mr Masilela). The "imposter" had details of the fidelity fund certificate of Mr Masilela. The imposter also had Mr Masilela's trust account banking details. Any attorney, on being aware of an imposter, would immediately take steps to protect their interests.
- 10 The untruthfulness in the account by the second respondent is shown by other considerations. He did not produce a copy of the offer to purchase that he says he gave the second applicant. There is no confirmatory affidavit by Mr Kutumela, who is said to have been selling the property. This is particularly revealing because Mr Kutumela's name does not appear in any document as a seller of immovable property. The contention by the applicants that Mr Kutumela was on the scheme is credible. Mr Kutumela would have agreed to have a property associated with him be said to be for

sale. The second respondent would then solicit purchasers for the property. The first respondent in turn would be presented as the attorney into whose trust account the purchase price was to be paid.

- 11 The second respondent, on finding out that the applicants were taking measures, mentioned that the property which the second applicant understood she had paid for was available. This was contrary to what Mr Kutumela told both the second respondent and the first applicant at their meeting.
- 12 The applicants did not show that the second respondent received money from the first respondent. They also did not show that the second respondent knew what the first respondent did once payments were made into the first respondent's trust account. The applicants have thus not shown that there is a basis for ordering the second respondent to disclose bank accounts into which the first respondent transferred monies from his trust account.
- 13 The first respondent did not enter an appearance. He was notified of the proceedings. He was sent the application by e-mail. I agree that the first respondent and the second respondent are parties to a scheme to defraud the public. They made representations to the applicants, resulting in the applicants making payments into the first respondent's trust account. This is so notwithstanding the fact that the first respondent is not a conveyancer. The first respondent used the prestige of being a legal practitioner to perpetrate a fraud on the public. Both the second respondent and Tshepo Zwane were "fielders" for the first respondent: they lured members of the public into believing that properties were available for sale. They then channelled members of the public to the first

respondent, who in turn represented that he was authorised to receive payments on behalf of sellers, by having payments made into his trust banking account.

14 The second respondent raised several preliminary objections. He contended that the named purchaser in the offer to purchase is the son of the first applicant and should have been joined. The first applicant is not suing based on a contract to which she is not a party. She seeks to recoup monies that she herself paid to the first respondent. Her son has no interest that merits being joined as a party. The second respondent further says that the bank where the first respondent's trust account is kept ought to have been joined. There is no credit to this objection. There is no suggestion that the bank is prejudiced by an order that the first respondent's trust account be "frozen". It bears pointing out that trust accounts are not ordinary transactional accounts but are accounts which the law requires legal practitioners to keep. Preserving the trust account of the first respondent, on the facts laid out in this judgement, is eminently desirable. It will not surprise the Court that there are other members of the public who were subjected to the same fraud which the first respondent visited on the applicants.

15 The second respondent further contends that there is a non-joinder of the seller and of Cyrus Property Brokers. The applicants do not seek relief against these persons. There is no need for them to have been joined. The fundamental relief sought by the applicants pertain to the applicants having paid monies into the trust account of the first respondent, with the second respondent having been an instrument to the making of those payments. The applicants cited all necessary persons, given the relief sought in the proceedings.

- 16 The primary relief sought by the applicants is that the specified account be “frozen”. The Court will grant the relief. However, this relief cannot be open-ended. The applicants must thus take necessary measures, as may be advised to them, on the grant of this order, for purposes of reclaiming their payments.
- 17 The legal practitioners failed to comply with the Directives of this Court. For example, the practitioners did not file practice notes. Legal practitioners are, of late, increasingly lax in complying with Directives on the conduct of proceedings in this division. It has become necessary to sanction practitioners for their non-compliance.
- 18 I make the following order:
- (1) The First National Bank of Southern Africa Limited is ordered to place a hold on account 6[...] (the Account), and that no transactions may be effected on the Account without an order by the Court.
- (2) The Applicants are directed to, within 30 days of the making of this order, to institute such proceedings as they may be advised, for the recovery of their respective payments, as mentioned in this judgement, made into the Account.
- (3) The Registrar is directed to bring this judgement, together with the record of proceedings, to the attention of the Legal Practice Council.
- (4) The legal practitioners in this matter are allowed only to mark a fee up to two-thirds of the fee which they would otherwise have been entitled to mark in these proceedings.

(5) The first respondent and the second respondent are ordered, jointly and severally, to pay costs, on an attorney and client scale.

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JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the applicant: L Mbanjwa
(Attorney with a right of appearance)

Instructed by: L Mbanjwa Inc.

Counsel for the second respondent: Mr Venter

Instructed by: Tayob Mashamba Inc.

Date heard: 3 March 2026

Date of judgment: 29 April 2026