REPUBLIC OF SOUTH AFRICA

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

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

18/7/2022
DATE

SIGNATURE

CASE NUMBER : 45483/18

In the matter between:

K201649887 Applicant

and

MAGAUTA CHARITY NJOVU First Respondent

ALL OCCUPIERS OF 1 WILLOW PLACE,
KELVIN, SANDTON Second Respondent

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY Third Respondent

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DOSIO J:

INTRODUCTION

[1] The application is for the eviction of the first and second respondents from 1 Willow Place, Kelvin, Sandton ('the property'). The applicant contends it legally purchased the property and has a right to occupy same.

[2] The application is opposed by the first and second respondents who are self-represented. The respondents apart from raising a defence, have raised points *in limine* in their respective answering papers and refuse to vacate the property.

BACKGROUND

[3] On 9 March 2018, the trustees of the insolvent estate of the late Jack Nobidinga Ngoma ('the deceased') concluded an offer with the applicant to purchase the property to the amount of R2 000 000-00. The applicant purchased the property and the property was registered in the name of the applicant on 13 June 2018.

[4] The property was sold as part of a liquidation sale as the deceased estate was declared insolvent on the basis of a sequestration application. This sequestration application appears from the papers to have been launched by the first respondent, however, the first respondent contends that her name was fraudulently inserted as the applicant.

[5] The applicant alleges that the first and second respondents were informed verbally and in writing that the applicant is the new owner of the property. A notice was served by sheriff on the occupants of the property on 24 July 2018 which was received by Ms Lpho Mashego, advising the occupiers that the property had been purchased by the applicant and that they must vacate by 31 August 2018.

[6] The applicant also contends that a meeting was held at the property in July 2018 between the deponent to the founding affidavit, namely Abdullah Amanjee ('Mr Amanjee'), the occupants of the property and the applicant's attorney. Mr Amanjee contends that he had a further meeting with the occupants in October 2018.

[7] The first and second respondents deny such a meeting was ever held and refuse to

vacate the property, as they contend they have a right to occupy the property as it was fraudulently sold as part of an insolvent deceased estate. In addition, the respondents further contend that they are the intestate heirs to the property.

[8] The applicant instructed Saint attorneys to dispatch a letter of demand to the respondents on 18 October 2018. The notice was dispatched on 30 October 2018 together with a copy of the title deed. Notwithstanding the letter of demand, the respondents refuse to vacate the property.

[9] The applicant seeks an eviction as it is suffering severe financial losses as a result of the continued unlawful occupation by the respondents.

[10] This application has a long history, riddled with interlocutory applications and procedural challenges, primarily brought by the respondents. There are numerous other related applications, such as the application from the first respondent to rescind the sequestration order under case number 3146/2017 ('the fraudulent sequestration application'), the application brought by the City of Johannesburg ('City') against the applicant and it appears as if the respondents have also instituted a damages claim against the applicant out of the High Court in Pretoria.

[11] The matter commenced before this Court on 3 May 2022. The deponents of both the first and second respondent's answering affidavit were absent. They are Ms Magauta Charity Njovu ('Ms Njovu') and Mr Hope Nhlanhla ('Mr Nhlanhla') respectively. The second respondent was represented by Ms Josephine Smith ('Ms Smith') who alleged she is one of the second respondents who reside at the property.

[12] As regards the absence of Ms Njovu and Mr Nhlanhla on 3 May 2022, it was alleged by Ms Smith that Ms Njovu is the caregiver to her son, namely, Mr Nhlanhla, who is ill. There was however no recent medical certificate handed up to confirm that Mr Nhlanhla was indeed still ill. The only medical certificate filed on CaseLines was obtained in 2020 and it states that Mr Nhlanhla underwent a surgical procedure. Although this Court requested a recent medical certificate, to date, none has been uploaded to CaseLines.

[13] The history of this eviction application is set out in the judgment of Willis AJ which was handed down on 23 December 2021 ('the interlocutory application judgment'). Prior to the matter being heard by Willis AJ, which was a special allocation by the Deputy Judge President,

there had been no fewer than six interlocutory applications instituted by the respondents before other Judges and four interlocutory applications before Willis AJ.

[14] After the main application was served on the respondents in December 2018, the respondents commenced with their numerous interlocutory applications. These applications were heard before Notche AJ on 26 November 2019. The interlocutory applications were as follows:
(1) a compelling application to produce for inspection various documentation;
(2) a notice in terms of Rule 7 where the respondents called on the current attorneys, namely Sithatu & Stanley attorneys to provide documentation of their due appointment;
(3) an application in terms of Rule 30(2)(b) calling upon the applicant to remove alleged causes of complaint for two irregular steps, namely the notice of substitution and a notice of set down for the matter to be enrolled on 26 November 2019.

[15] The compelling application, the deficient Rule 7 response and the Rule 30 application were dismissed by Notche AJ and the respondents were ordered to file their answering affidavits by 13 December 2019.

[16] The first respondent then filed an application under case number 30412/2019 to rescind and set aside the order placing the deceased's estate under final sequestration.

[17] By March 2020 the respondents had their purported Rule 21(4) interlocutory application pending and the matter was set down on the opposed motion Court roll for 26 October 2020. On that day a further interlocutory application was launched by the respondents compelling the applicant for non-compliance and complaining that the eviction application had been prematurely set down as there was a pending interlocutory application in terms of Rule 21 (4) and the pending rescission application. The *modus operandi* of stating that the eviction application is prematurely set down, is similar to the matter *in casu* and the Court will deal with this later in the judgment. On 29 October 2020 the matter came before Majavu AJ and the matter was removed from the roll due to a sick note filed stating that Mr Nhlanhla had undergone an operation and that Ms Njovu was caring for him.

[18] In November 2020 the applicant brought an application to compel the filing of practice notes and heads of argument which the respondents opposed and served a notice in terms of Rule 30 to remove a cause of complaint. On the same day, 12 November 2020, the respondents delivered a notice to produce documents in relation to Ms Stanley, more

specifically, her identity document and documents to prove she was an admitted attorney. The respondent's further sought the identity document of the counsel in the matter, namely Advocate Lautre', as well as his enrolment as an advocate.

[19] On 12 November 2020, the respondents delivered a notice in terms of Rule 30 calling on the applicant to remove alleged causes of complaint in relation to the applicant's application to compel heads of argument. This was followed by an application by the respondents to declare the applicant's set-down of the main application irregular and an abuse of process and requested it to be set aside. The respondent's further sought an order to declare the applicant's delivery of heads of argument in the main application, prior to delivering a consolidated index, as an irregular step and an abuse of process and to direct a determination of the so-called Rule 21(4) application to precede the main application.

[20] In late December 2020 the second respondent brought an application to declare the applicant's application titled 'application to compel the practice notes and heads of argument' as an irregular step and setting it aside and directing the applicant's representative to produce within 5 days, documents for inspection.

[21] In January 2021, the applicant's application to compel practice notes and heads of argument in the eviction application was heard before Mogagabe AJ. The respondents raised the existence of all the interlocutory applications and Mogagabe AJ, after liaising with the office of the Deputy Judge President ('DJP'), dealt with all the applications. Mogagabe AJ ordered the respondents to file heads of argument, by no later than 22 February 2021. The respondents did not file heads of argument.

[22] On 8 March 2021, the matter came before Dukada AJ, however it was removed from the roll. In a letter by the DJP dated 8 April 2021, the DJP allocated the matter to a special hearing date and directed that heads of argument and a practice note on behalf of the respondents must be filled by no later than 21 May 2021. The respondents once again did not file heads of argument or a practice note.

[23] When the matter was placed before Willis AJ on 10 August 2021, neither the first or second respondents appeared. Instead, Ms Smith appeared as one of the second respondents. During this hearing, Ms Smith raised numerous objections as regards the professional certification of the applicant's attorney and the applicant's counsel. When Willis AJ made a ruling dismissing this objection, Ms Smith left the hearing, without being excused. The four

applications before Willis AJ were accordingly heard in the absence of the respondents.

[24] The four applications heard by Willis AJ were:
(1) The respondents' application purportedly in terms of Rule 21(4);
(2) The respondents' November 2020 'non-compliance' application;
(3) The respondents' December 2020 application in terms of Rule 30; and
(4) The applicant's application to compel the filing of practice note and heads of argument.

[25] As regards the respondents' first interlocutory application, in terms of Rule 21(4), the respondents sought an order to dismiss the eviction application on the basis that in terms of Rule 21(4) the applicant had provided an inadequate response to the respondent's notice in terms of Rule 14(6) as required in terms of Rule 14(5)(a) read with Rule 14(5)(c). In addition, the respondents contended that the applicant lacked *locus standi* to bring the eviction application. Willis AJ found that Rule 21 was the incorrect Rule to be utilised, as it refers to further particulars and found no merit in the application and dismissed it.

[26] As regards the respondents' second interlocutory application, namely, the November 2020 'non-compliance' application, the respondents contended that the setting down of the application was irregular due to the non-compliance of filing heads of argument before the delivery of a consolidated index. The respondents directed the Court to order that the Rule 21(4) application precede the eviction application and that the rescission application also precede the eviction application. The respondents also sought a finding from the Court that the applicant's legal representative contravened the Legal Professions Code of Conduct.

[27] Although Willis AJ was aware that Mogagabe AJ had already dealt with some of the relief sought, rendering some of the issues moot, Willis AJ nevertheless held there was no irregular step in setting down the main application or the delivery of the applicant's heads. Willis AJ also held that there was no basis for the respondents to have persisted with the allegations against the applicant's attorneys or counsel and accordingly dismissed the application.

[28] As regards the respondents' third interlocutory application, namely, the December 2020 application in terms of Rule 30, the respondents applied for orders compelling the applicants to produce documents pertaining to the legal representatives and declaring the applicant's application to compel heads of argument an irregular step. Willis AJ dismissed the application. It is important to note that the applicant furnished a copy of the identity number and Fidelity Fund certificate of its attorney.

[29] As regards the applicant's interlocutory application to compel the respondents to file practice notes and heads of argument, Willis AJ held that after the applicant filed its heads of argument on 24 March 2020, the respondents were required to file their heads of argument by 20 May 2020. Willis AJ ordered that the respondents heads of argument be filed no later than 17 January 2022. To date, the respondents' heads of argument in the matter *in casu* have still not been filed.

[30] Willis AJ granted costs against the respondents on the punitive scale as between attorney and client and found that the respondents had deliberately dragged their feet, bringing meritless interlocutory applications, purely with the intention of delaying the eviction.

[31] The interlocutory application judgment heard by Willis AJ was not the end of the matter, as that judgment itself was subject to an unsuccessful application for leave to appeal before Willis AJ which was dismissed on 3 March 2022. This dismissal of the leave to appeal is now the subject of a rescission application.

[32] It is important to note that even though the issue of the applicant's counsel had been fully dealt with previously by Willis AJ, Ms Smith during the leave to appeal application, once again raised this issue, whereupon for a second time, Willis AJ explained that Advocate Lautre' was properly before him. This resulted in Ms Smith once again threatening to withdraw herself until such stage as Advocate's Lautre's credentials were confirmed.

[33] After the respondent's application for leave to appeal was dismissed, the applicant set the main eviction application down on the opposed motion roll for 3 May 2022.

The application *in casu*

[34] Ms Smith sought a postponement of the matter on 3 May 2022, arguing that the present application was not ripe for hearing and that it had been prematurely set down. Ms Smith submitted that there were other pending applications that had not yet been heard, which are directly linked to the application *in casu*. Ms Smith based her arguments on the grounds set out in the respondents notice in terms of Uniform Rule 30 & 30(A)(1) dated 28 April 2022. The grounds raised were:

(1) That the respondents 'applications' in terms of Uniform Rule 42, 30, 6(5)(g) and 35(13) were still pending;

(2) The respondents' rescission application of the judgments of the Honourable Willis AJ

is still pending;

(3) The applicants' (and the Honourable Willis AJ's) knowledge of a phone number which was ostensibly obtained from the Registrar of the Court was somehow evidence of foul play on the part of the applicant / presiding Judge; and

(4) The practice manual had not been complied with in respect of the joint practice note.

[35] The applicants counsel submitted that there was no merit in respect to the grounds as set out in the respondents' notice in terms of Uniform Rule 30 & 30(A)(1). The applicant's counsel argued that:

(1) All outstanding interlocutory applications were dealt with by Willis AJ on 10 August 2021 and that as pointed out in paragraph 21 of the leave to appeal judgment, Willis AJ confirmed that there was no application in terms of Rule 42, 30, 6(5)(g) and 35(13) before the Court. Counsel argued that the respondents' submissions that these applications need to be dealt with are misplaced, because despite answering to the papers, the applicant's counsel argued that these 'applications' were not brought in the proper format of a notice of motion supported by a founding affidavit and are therefore are not before the Court.

(2) As regards the pending rescission of Willis AJ's order, counsel argued that this was not a bar to the eviction application proceeding, as rescission applications do not suspend the execution of court orders.

(3) As regards the alleged impropriety on the part of the applicant's attorneys and Willis AJ, counsel argued there was no merit. Counsel argued that when Ms Smith was questioned by Willis AJ, in the application for leave to appeal, as to who the mystery number actually belonged to, she left the hearing and did not return. This was the second time that Ms Smith abruptly left the hearing without being excused, a *modus operandi* that has frequently been adopted by Ms Smith. Accordingly, the leave to appeal proceeded before Willis AJ in the absence of Ms Smith. Counsel argued that the respondents have continuously challenged the applicant's and their attorneys *bona fides* and even that of Willis AJ. It is important to note that the respondents have written a letter of complaint to the DJP questioning the credentials of Willis AJ to act. The DJP has replied to the respondents stating he will not entertain such requests.

(4) In respect to the issue pertaining to the joint practice note, counsel argued that an email was sent to the respondents on 11 April 2022 containing a draft joint practice note, together with the notice of set down for the respondent's comment, yet the respondents elected not to reply to this email but instead launched a further point *in limine* stating that there had been non-compliance with the directives.

[36] This Court asked Ms Smith why the respondents had not yet compiled their heads of argument in respect to the rescission of the sequestration order, to which Ms Smith answered that it would be very technical to compile these heads of argument. Yet, she agreed that much time had been spent on compiling various interlocutory applications which themselves were quite technical. It is clear to this Court that Ms Smith is quite conversant with all the various practice directives and is well skilled in drafting the various interlocutory applications alluded to above.

[37] This Court was not satisfied with the delay tactics exhibited by the respondents and having heard both parties on the request for the postponement, this Court dismissed the application for a postponement. At this point Ms Smith then left the Court without the Courts permission.

[38] Before Ms Smith left, this Court questioned Ms Smith why she would not want to defend the eviction, to which Ms Smith replied that she did not have the *locus standi* to make submissions on behalf of the first and second respondents. The *modus operandi* of Ms Smith leaving the Court without permission is clearly evident from the interlocutory judgment of Willis AJ as well as the leave to appeal judgment of Willis AJ, where Ms Smith left the proceedings without the Court's permission.

[39] The matter was accordingly postponed to 4 May 2022 to continue with the eviction application. On 4 May 2022, Ms Smith was once again absent.

[40] There are conflicting decisions in this division as to whether there is a substantive rule of law that an application to rescind an order or judgment automatically suspends its operation.

[41] Prior to the repeal of Uniform Rule 49(11) on 22 May 2015, once an appeal had been noted, or an application for leave to appeal against or to rescind, correct, review or vary an order of a court had been made, the operation and execution of the order in question would be suspended, pending the decision of such appeal or application, unless the court which gave such order, on the application of a party, otherwise directed.

[42] Section 18 of the Superior Courts Act 10 of 2013, ('Superior Courts Act'), which commenced on 23 August 2013 states that:

‘(1) Subject to subsection (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or 92), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm of the court does not so order and that the other party will not suffer harm if the court so orders.”

[43] In the matter of *United Reflective Converters (Pty) Ltd v Levine* [1], the Court held that there is no substantive rule of law that an application to vary or rescind an order or judgment automatically suspends its operation. In the matter of *Khoza v Body Corporate of Ella Court* [2], the Court held that at common law there is a substantive rule suspending the operation of an order or judgment upon the noting of an application for rescission. *Khoza* [3] was followed in the matter of *Peniel Development [Pty] Ltd and another v Pieterson and others* [4]. Both *Khoza* [5] and *Peniel* [6] support the fact that the Rule that applies to appeals should be extended to the noting of a rescission as well.

[44] In the matter of *The Erstwhile Tenants of Williston Court and Another v Lewray Investments (Pty) Ltd and Another* (GJ) [7], the Court discussed the effect of s18 of the Superior Courts Act 10 of 2013. The Court in *Erstwhile* [8] came to the conclusion that s18(1) of the Superior Courts Act provides for the automatic suspension of the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal. The Court held that no provision is made for the automatic suspension of the operation and execution of a decision which is the subject of an application to rescind, correct, review or vary an order of court.

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[1] *United Reflective Converters (Pty) Ltd v Levine* 1988 (4) SA 460 (W), at 463J-464B
[2] *Khoza v Body Corporate of Ella Court* 2014 (2) SA 112 (GSJ), at 117H-I
[3] (note 2 above)
[4] *Peniel Development [Pty] Ltd and another v Pieterson and others* 2014 (2) SA 503 (GJ)
[5] (note 2 above)
[6] (note 4 above)
[7] *The Erstwhile Tenants of Williston Court and Another v Lewray Investments (Pty) Ltd and Another* (GJ) (unreported case no 17119/15, 10-9-2015)
[8] (note 7 above)

[45] The Court in *Erstwhile* [9] held that the provisions of s18 of the Superior Courts Act must be interpreted in accordance with the established principles of interpretation [10] and stated that:

'had it been the intention of the legislature for the operation and execution of a decision which is the subject of an application for rescission also to be automatically suspended, then such decision would have been expressly included in subsection 18(1).' [11]

[46] This Court is in agreement with the decision of *Erstwhile* [12] and finds that s18 of the Superior Courts Act only provides for the automatic suspension of the operation and execution of a decision pending an application for leave to appeal. There is nothing which indicates an intention on the part of the legislature to broaden the automatic suspension and execution of decisions which are subject to a rescission application.

[47] A person who seeks to suspend the execution of an order, excluded in terms of s18 of the Superior Courts Act, may approach a Court in terms of Uniform Rule 45A to suspend the execution pending the finalisation of an application for rescission. However, the operation and suspension of such an order is not automatically suspended.[13] Section 45A states:

'The court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of appeal, such suspension is in compliance with section 18 of the Act.'

[48] Even though the respondents were absent and Ms Smith removed herself without the Court's permission, this Court has considered the respondents' defence in their absence.

EVALUATION

The points *in limine* raised by the respondents and their defence

[49] The three points *in limine* raised in the first respondent's answering affidavit refer to: the following:

(1) The applicant's representation in these proceedings;

(2) The applicant's *locus standi* to institute these proceedings; and

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[9] (note 7 above)

[10] See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18; Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk 2014 (2) SA 494 (SCA) para 12.

[11] (note 7 above) para 18

[12] (note 7 above)

[13] see *Hlumisa Technologies (Pty) Ltd and another v Nedbank Ltd and others* 2020 (4) SA 553 (ECG) para 14-15, and *Ngongo and Another v Voltex (Pty) Ltd* (9813 of 2021) [2021] ZAGP JHC 149 (25 June 2021).

(3) The applicant's non-joinder of all interested parties.

[50] The first respondent also raised issues pertaining to her rights as regards the deceased estate and she gave a brief history of the fraudulent activities that led to the property being transferred to the applicant.

[51] As regards the first point *in limine* pertaining to the applicant's representation in these proceedings, the first respondent contends that the applicant launched the eviction proceedings using Ms Amina Bibi Rahman ('Ms Rahman'), from Amina Rahman Attorneys. The first respondent contends that Ms Rahman initially represented her and she had been instructed by the first respondent to remove the second respondent as executor in the deceased estate. Ms Rahman, contrary to the first respondent's instruction, then proceeded to bring a sequestration application. Due to the conflict of interest and involvement of Ms Rahman in the eviction application, the first respondent delivered a notice in terms of Rule 7, challenging the authority of Saint attorneys to represent the applicant. The applicant's attorneys then changed to Sithatu & Stanley attorneys, accordingly, the first respondent filed another notice in terms of Rule 7. Although the applicant delivered the applicant's resolution authorising the latest appointment of Sithatu & Stanley attorneys, the first respondent contends that the application *in casu* should be dismissed, as there are discrepancies in the signatures of all three directors of the applicant authorising the representation of the applicant's newly appointed attorneys.

[52] As regards the first respondent's, first point *in limine*, the applicant contends that the letter of demand was launched by its previous attorneys who were Saint Attorneys, however the new attorneys are Sithatu & Stanley attorneys. In addition, the applicant contends that Ms Rahman's role was limited to merely sending a letter to the respondents, demanding that they vacate the premises. As regards the resolutions that were signed by the directors, Mr Amanjee confirmed that the only directors are himself and his two brothers and that there were no discrepancies. The applicant's counsel also stated that this issue was raised by the respondents in an interlocutory application under Rule 30 and Rule 35 which was dealt by Notche AJ and that this application brought by the respondents was dismissed on 26 November 2019.

[53] This point *in limine* has been consistently raised by the respondents and was dismissed before Notche AJ. There is no need for this Court to revisit it. The applicant has filed the relevant resolution, which is authentic and pertains to the directors. Accordingly, this point *in limine* is dismissed.

[54] The second point *in limine* pertains to the lack of *locus standi* in respect to Mr Amanjee, as well as the applicant's attorneys to institute the proceedings. The applicant has filed the applicant's CIPC reports which sets out the names of the various directors. This issue pertaining to the *locus standi* of Mr Amanjee and the applicant's attorney has been raised on numerous occasions and has been dealt with by previous Judges. Accordingly, this point *in limine* is also dismissed.

[55] The third point *in limine* pertains to the failure of the applicant to join the trustees of the deceased estate. The applicant contends that it dealt with Ms Rahman who was winding up the deceased estate and the property formed part of this deceased estate. The applicant signed an offer to purchase and paid the purchase price. The applicant contends it is not for the applicant to join other parties, as the applicant liaised with the agent and Ms Rahman.

[56] The parties in the eviction application are the owner of the property, the unlawful occupiers of the property and the City. These parties have all been cited. There is no need to join anyone else as they have no interest in the eviction application. The fraudulent sequestration application is running separately and there has been no application to consolidate these applications. This Court is in agreement that the point *in limine* regarding non-joinder is meritless and accordingly it is dismissed.

[57] In essence the defence of the first respondent is that she is the widow and surviving spouse of the deceased who died intestate. As a result, she contends that she is entitled to a spouse's share of inheritance in the deceased estate as she co-owned the property and that she is not an unlawful occupier of the property. The first respondent contends that the property was fraudulently transferred to the applicant through a series of events triggered by her former attorney Ms Rahman, resulting in the deceased estate being declared insolvent. The first respondent contends the sequestration order was obtained fraudulently in her absence and that the Court would not have declared the deceased estate insolvent if it had the correct facts before it. The first respondent contends that she has since initiated the process of rescinding or setting aside the sequestration. The first respondent also contends that although she delivered a notice in terms of Rule 35(12) to the applicant to produce documents, the applicant failed to do so.

[58] The second respondent also raised points *in limine* pertaining to the applicant's current attorneys lacking the power to act on behalf of the applicant. This aspect has been dealt with at

length on numerous previous occasions by previous Judges and found to have no merit. Accordingly it is dismissed. These attempts to challenge the *locus standi* of Ms Amanjee, the applicant's attorney and the applicant's counsel are all attempts to delay these proceedings. The second respondent inadvertently admitted in his answering affidavit at paragraph [9.10] that he would delay this application by bringing further applications to "protect his rights". It is clear that the second respondent has done exactly that.

[59] In essence the second respondent's defence is that he is the son of the deceased and that he is an heir to his father's deceased estate. The second respondent also contends that the deceased's estate was fraudulently declared insolvent and liquidated in circumstances where his assets exceeded his liabilities. The second respondent also contends that Ms Rahman misrepresented the true state of affairs of the deceased's estate which led to the Court granting the sequestration.

[60] The applicant contends an order in terms of s4(2) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act') was obtained and served on the respondents. Accordingly, it was argued there are no bars to the eviction order being granted. Furthermore, it was argued that the applicant is suffering losses in the amount of roughly R15 000.00 per month in respect of rates, R20 000.00 per month in respect of lost rental income, and the estimated repairs to the property are in the region of R200 000.00. The applicant's counsel argued that the respondents have had years to pursue the setting aside of the transfer and the sequestration, but have not done so. In addition, the applicant contends that the eviction of the respondents would be just and equitable because the respondents are damaging the property and an application has been launched against the applicant by the City, due to the bad conditions in which the unlawful inhabitants occupy the property. The applicant contends that the application brought by the City confirms that:
(1) the applicant is indeed the owner of the property, and
(2) the respondents are in unlawful occupation of the property.

[61] In regard to the first respondent's defence, this Court finds that the applicant saw that the property was for sale and purchased it. The title deed reflects that the applicant is the owner. The applicant is a *bona fide* purchaser and is entitled to seek the eviction of the first respondent. Although the first respondent has filed an application to rescind the sequestration order, no heads of argument have been filed as yet, which begs the question whether this is once again an attempt by the first respondent to delay this eviction. Although the first respondent alleges Ms Rahman incorrectly placed the first respondent's name as the applicant

in the sequestration application, the current state of affairs is that the sequestration application still reflects the first respondent as the applicant. Instead of prosecuting the alleged fraudulent sequestration application and setting aside the transfer of the property to the applicant, the respondents have opted to delay the eviction by launching countless interlocutory applications. The answer afforded by Ms Smith that it is too technical to draft the heads of argument in the rescission of the sequestration application appears to be once again an attempt on the part of the respondents to delay the finalisation of this eviction.

[62] In regard to the second respondent's defence, he claims to be the son of the deceased, yet the first respondent in her answering affidavit refers to him as her step-son. In addition, at paragraph 8.2 of the second respondents answering affidavit, he mentions his surname is actually 'Njovu', which is the first respondent's maiden name, yet the name of the deponent to the second answering affidavit is Mr Hope Nhlanhla. Therefore, whilst the second respondent challenges and questions the *locus standi* of Mr Amanjee, the applicant's attorney and the applicant's counsel, the requisite *locus standi* of the second respondent is equally placed in doubt. The second respondent has not proven his *locus standi*. No birth certificate was attached to the matter *in casu* illustrating that Mr Nhlanhla is the son of the deceased. In addition, nothing is known about Ms Smith and whether she has any right herself to represent the second respondent in these proceedings. The second respondent relies on and refers to the fraudulent sequestration and the fact that he is an intestate heir of the deceased, however, due to his absence in court and a failure to rescind the fraudulent transaction, as well as a lack of proof that he is in fact an heir, the second respondent has failed to sufficiently prove this defence.

[63] The applicant has legitimately purchased the property, paid the purchase price and took transfer of the property. The applicant has accordingly proven its acquisition and ownership of the property. The allegations made by the first and second respondents regarding a fraudulent sequestration, are being used to delay the inevitable.

[64] The respondents adopted an interesting stratagem in this matter. Instead of prosecuting the fraudulent sequestration, in which they seek the setting aside of the transfer of the property to the applicant, they have opted to attempt to delay and obfuscate the eviction proceedings for as long as possible by launching countless interlocutory applications. If the respondents were truly the victims of a terrible fraud, this Court would have expected them to pursue that matter with as much vigour as they have demonstrated in numerous interlocutory applications. Although a notice was filed by the first respondent to rescind the sequestration,

nothing has happened on that matter since 29 January 2021.The countless interlocutory applications all show that the respondents are resorting to delay tactics.

[65] The crux of the respondents' defence is that there was a fraud perpetrated upon the deceased resulting in the fraudulent sequestration and transfer of the property. The *locus classicus* on this is the case of *Legator McKenna Inc & another v Shea & others* [14], which confirms that where such underlying transaction is tainted by fraud, ownership will not pass despite registration of transfer. The problem with the respondents' defence is that no Court has declared that there was any fraud. The sale can only be set aside once there was an order to that effect. [15] As a result, the principle as set out in the matter of *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [16] is applicable, which states that administrative action may remain valid and continue to have legal consequences until set aside by proper process.

[66] The respondents have simply alleged the presence of fraud resulting in the sequestration order being granted, however, in light of the *Oudekraal* [17] principle, this is not enough. This Court would have expected that the respondents would have pursued the fraud application with much vigour in setting it aside, however, this has not been done. The respondents have had years to pursue the setting aside of the transfer, but have failed to do so. This has caused immense prejudice to the applicant.

[67] The property has been registered in the applicant's name and the respondents have been provided with a notice to vacate as well as a letter of demand. An order in terms of s4(2) of the PIE Act was obtained and served. There is no bar to the eviction order being granted. Accordingly, this Court finds that the eviction is just and equitable.

[68] Apart from losing money as a result of having to pay outstanding rates, a loss of rental income and repairs to the property, the applicant has had to pay legal expenses to defend the various applications brought by the respondents, as well as an application brought by the City, due to the continued unlawful occupation in squalor by the respondents which poses a risk to the property and the neighbourhood. While the City recognises the applicant as the owner of the property is it however, unfortunately under the impression that the applicant is the reason for the dilapidation of the property.

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[14] *Legator McKenna Inc & another v Shea & others* 2010 (1) SA 35 (SCA)
[15] see *Tapala and Another v Tlebetla and Others* (89400/16) [2019] ZAGPPHC 46
[16] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA)
[17] (note 16 above)

COSTS

[69] The only remaining issue is related to the question of costs of the application. This Court finds there is no reason why costs should not follow the result.

ORDER

[70] In the result, I make the following order;

1. The first respondent and all those persons who may through the first respondent and/or with her authority, be residing at the property situated at 1 Willow Place, Kelvin, samdton, 2090 and described as REMAINING EXTENT OF ERF 61 KELVIN TOWNSHIP ('the property') are ordered to vacate the property within 30 (thirty) calendar days from date of this order;
2. The second respondent is ordered to vacate the property within a period of 30 (thirty) calendar days from date of this order;
3. In the event that the respondents fail to vacate the property within a period of 30 (thirty) calendar days from date of this order, the Sheriff of this Court is authorised to eject the respondents and any such persons from the property forthwith;
4. The sheriff of the Court is authorised to request any persons, including members of the South African Police Services, to assist him in the eviction and removal of the first respondent and second respondent and their belongings, from the property;
5. The costs of the application are to be paid by the first and second respondents jointly and severally, the one paying the other/s to be absolved.

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JUDGE OF THE HIGH COURT

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on18 July 2022

Date of hearing: 3-4 May 2022
Date of Judgment: 18 July 2022

Appearances:
On behalf of the applicant: Adv. T. Lautre'
Instructed by: Sithatu and Stanley Attorneys

On behalf of the respondents:	Self-represented