

REPUBLIC OF SOUTH AFRICA



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

Case Number: **2024- 16548**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
18 Dec 2024	<div></div>
DATE	SIGNATURE

In the matter between:

AQUEEL PATEL NO in his capacity as curator to **MAHOMED DEDAT, ZAIBOONISHA DEDAT ,SHAHEDA DEDAT ,ZOHRA MAHOMED DEDAT ,ISMAEL BHOJA NO**
Applicant

and

MOHAMED NAEEM DEEDAT First Respondent

REGISTRAR OF DEEDS Second Respondent

JUDGMENT

BADENHORST AJ:

[1] *“How sharper than a serpent’s tooth it is to have a thankless child”*, wrote Shakespeare in Act 1, Scene 4 of King Lear. Once tender hearts, now sharp like knives, is a tale as old as time, where greed survives.

- [2] This case and its related litigation tell the story of family strife over inherited assets which have spurned costly litigation that keeps inflaming emotions. Considered in the cold light of day, the lesson is that a prudent family should never travel the same road. It can safely be predicted that, if this family remains on its current trajectory of inability to reach an amicable resolution of this destructive feud, nothing will remain of their earthly feud when the bitter end is reached.
- [3] The application was launched on 12 October 2024 in the form of a so-called “semi-urgent” matter for hearing in the urgent motion court on 3 December 2024. Elaborate times were allowed for the filing of papers.
- [4] The relief claimed is, in essence, for the *status quo* to be preserved in relation to a one eighteenth fraction [“the fraction”] of an undivided share of the ownership in a property situated at Erf 280 Fordsburg (“the property”) with the street address 41 Lillian Road, Fordsburg, Johannesburg.
- [5] More particularly, the first respondent (who owns the contested fraction) is sought to be interdicted against encumbering, alienating, bonding, selling, leasing or in any way transacting or dealing with it pending the finalisation of an action instituted by the applicants under case number 2024-107194 (“the action”). It is claimed in the action that first respondent fraudulently took transfer of “certain undivided shares in the property”. These allegations are vehemently disputed in the answering affidavit.
- [6] An order is also requested for the Registrar of Deeds (the second respondent) to record the proposed interim interdict against the title deed of the property to avoid any dealings with the property by anyone in the interim.
- [7] The action was launched in this court on 19 September 2024. The claims made therein are advanced on the premise that the plaintiffs in that case (whose interests coincide with those of the applicants) are the owners of the property and that the defendants (including the first respondent) are obliged to transfer the shares in the property held in their names to the plaintiffs.

- [8] On 26 April 2024, the first respondent and others (not cited herein but who also hold undivided fractional ownership interests in the property) launched an application [“the April 2024 application”], citing Mr Mahomed Dedat (a 95 year old man) [“Mr Dedat”] who is registered as the owner of a one third share in the property. In the April 2024 application, an order is sought to terminate the joint ownership in the property, sell the property and divide the proceeds according to the interests held by the respective part owners.
- [9] The story begins many years earlier when Mr Dedat and his two brothers (now deceased) became owners of one third each of undivided shares in the property. The deceased brothers’ shares have since devolved to their respective heirs, hence the lengthy list of litigants cited in the various proceedings.
- [10] I shall refer to the two (regrettably) opposing sides as “the Dedat camp” to describe Mr Dedat and his curator bonis (the applicant in the urgent application) and to “the opposing camp” being the heirs and successors of the two deceased brothers of Mr Dedat. Together, the opposing camp holds two thirds’ interest in the property (made up of several fractions) and Mr Dedat (via his curator) holds the remaining one third.
- [11] Since September 2024, the Dedat camp’s attorney addressed serial requests to the opposing camp’s attorney for an undertaking pending the final determination of the action to preserve the status quo. No undertaking was forthcoming. In fact, on 30 Sept 2024 the attorney made it clear that no undertaking was forthcoming.
- [12] The impasse eventually triggered this urgent application.
- [13] The urgent application is confined to restricting all dealings by the first respondent of whatsoever nature concerning the fraction, pending the finalisation of the action.
- [14] It is unexplained in the papers why the rest of the opposing camp had not been joined in the proceedings. I agree with counsel for the first respondent that they have a substantial interest in at least paragraph 3 of the notice of application (in which the Registrar of Deeds is requested to prohibit any dealings with the property pending the finalisation of the action). Such relief cannot be granted

without joining them, or it is at least shown that they have waived their right to be joined or that they abide this court's decision. None of these requirements is satisfied.

[15] To overcome this problem, counsel for the applicant abandoned paragraph 3 during argument but persisted with prayer 2 against the first respondent.

[16] The applicant states the following in support of his alleged reasonable apprehension irreparable harm in paragraphs 45 and 46 of the founding affidavit, in support of the request for interim relief:

"The Applicants have no protection at this stage that the First Respondent will not on-transfer title in the property to an unsuspecting member of the public or try to alienate title to an associated person by way of a mortgage bond so as to frustrate the Applicants rights. First Respondent is already party to a fraud that appears from the affidavits filed by Applicants in the main application. There is therefore good cause to believe that he will take steps to hold onto his share of the property by any means.

Currently, the First Respondent is both able and capable to alienate title in the property."

[17] The legal position of a co-owner (of an undivided share in property) is stated as follows in *Bonheur 76 General Trading (Pty) Ltd v Caribbean Estates (Pty) Ltd* 2011 JDR 0182 (SCA) at paragraph [13]:

"Each co-owner of property is entitled to dispose of his share without the consent of the others. The right of disposal is not fettered unless by agreement. Of course, one co-owner may not use or deal with the common property as a whole without the consent of all the co-owners. But the sale of a share, or its hypothecation, does not affect the property as a whole."


[18] It is accordingly correct, as stated by the applicant, that the first respondent can alienate the fraction. But such alienation will not affect the property as a whole. First respondent may not use or deal with the common property (as a whole) without the consent of all the co-owners including the applicant.

[19] That brings me to the well-known requirements for an interim interdict – proof of a prima facie right, a reasonable apprehension of harm, absence of an alternative remedy and that the balance of convenience favours the relief claimed by applicant.

[20] The application fails to establish these requirements: the applicant has no right to interdict the first respondent from encumbering, alienating, bonding, selling, leasing or in any way transacting or dealing with his (fractional) share in the property. The allegation of fraud is contested and I am unable to find that the alleged right has been prima facie established upon the application of the test in *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189-1190 and *Gool v Minister of Justice and Another* [1955] 3 All SA 115 (C). There can in any event be no harm to the applicant, because – as a matter of law – none of the perceived actions by first respondent can affect the property as a whole. It also follows that there is no balance of convenience in applicant's favour and the question of an alternative remedy does not arise. Tellingly, the applicant does not allege that the first respondent has threatened to or has the power to do anything that will affect the property as a whole.

[21] The following order is issued:

The application is dismissed with costs.


BADENHORST AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant

Adv Z Khan, instructed
by Magera Attorneys

For the First Respondent

Adv L Grobler, instructed by Joselowitz &
Andrews Attorneys