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**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

**CASE NUMBER: D6418/2022**

In the matter between:

**LOGASHINI ISAAC**

**APPLICANT**

and

**PRESHNEE ISAAC**

**FIRST RESPONDENT**

**NADARAJ NARAIMSN GOVENDER**

**SECOND RESPONDENT**

**SERENA GOVENDER**

**THIRD RESPONDENT**

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**ORDER**

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**The following order is made:**

1. The late filing of the Second and Third Respondent's heads of argument is condoned. There is no order as to costs in respect of the condonation application.
2. The Applicant, Logashini Isaac is given leave to intervene in the main application under case number D6418/2022 and is granted leave to join as the

Second Applicant in the main application.

3. The founding affidavit of the Applicant in the intervention application, Logashini Isaac, dated 19 February 2024, shall stand as a supplementary founding affidavit in the main application.

4. The Second and Third Respondents in the intervention application, being the First and Second Respondents in the main application, shall be entitled, within 15 days of the granting of this order, to deliver a supplementary answering affidavit, dealing with the facts and allegations contained in the aforesaid supplementary founding affidavit.

5. The Applicant (then being the Second Applicant in the main application) shall deliver her reply, if any, within 10 days of delivery of the aforesaid supplementary answering affidavit.

6. The costs of the intervention application shall be costs in the cause of the main application.

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## **JUDGMENT**

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### **BOND AJ**

[1] There is an idiom which states 'good walls make for good neighbours'. What may happen when the good walls become bad, is still to be seen.

[2] In this application the Applicant seeks leave to intervene in pending motion proceedings between the First Respondent (as Applicant therein) and the Second and Third Respondents (as First and Second Respondents

therein).

[3] Relief is also sought permitting the founding affidavit in this intervention application to stand as a supplementary founding affidavit in the main application.

[4] The Second and Third Respondents heads of argument were delivered out of time and were accompanied by an application for condonation. Condonation was not opposed and was granted in the interest of having the matter fully ventilated.

[5] The main application concerns itself with the abatement of nuisance relating to a common boundary wall, the passage of water and the accumulation of soil against on the Second and Third Respondent's side of the boundary wall. The Applicant in this intervention application is the owner of immovable property which neighbours the Second and Third Respondent's property.

[6] The Applicant avers that she is the registered owner of 3[...] B[...] Way, Scottsburgh, and her sister, the First Respondent (who is the only Applicant in the main application), resides there. There can be no contention that these facts are not true.

[7] The Applicant goes on to explain the basic terms of an agreement which is said to exist between herself and the First Respondent relating to the ownership of their property, which the Applicant states is held in her name, partly as nominee for the First Respondent. This also is a fact which cannot earnestly be contested by the Second and Third Respondents. The First Respondent, being the Applicant in the main application, unsurprisingly, does not oppose the matter.

[8] In their answering affidavit, the Second and Third Respondents oppose the matter on various grounds. Amongst others, they make

assumptions regarding what disclosures were made to various regulatory authorities by the Applicant when she purchased the property, they challenge the commissioning of the Applicant's affidavit and raise various defences pertaining to the underlying dispute, which undoubtedly will be argued at the hearing of the main application.

[9] A chief complaint by the Second and Third Respondents relates to the allegation that the present application is an abuse of the court process and should not be tolerated. Reference to a previous application seeking to refer issues in the main application to oral evidence (which was dismissed) is also made.

[10] The Second and Third Respondents also take issue with both the introduction of further evidence in the main application as well as the existence of a pending action which, on face value, seems to seek, at least in part, similar relief to that of the main application.

[11] In both oral argument, and the Second and Third Respondents heads of argument, criticism is levied against the Applicant for failing to state that she has a direct and substantial interest in the main application. The Second and Third Respondents, also suggest that the current application is to cure the point of law raised by them in the main application, that the First Respondent (as Applicant in the main application) does not have the necessary locus standi to institute the main application.

[12] I am not certain that I agree with the latter contention, but that is not a finding I need to make. What is interesting however, is that the Second and Third Respondents, in this intervention application, deny that the Applicant has a direct and substantial interest in the main application. This seems to contradict the locus standi defence raised in the main application.

[13] During oral argument, I canvassed with counsel for the Second and Third Respondents as to whether her contention was that there was no direct and

substantial interest, or rather that the Applicant had failed to use those words expressly.

[14] I find no merit whatsoever in the submission that the words 'direct and substantial interest' must be included in the affidavit. The finding of whether the Applicant has a direct and substantial interest in the main application is a legal conclusion which the court must draw from the primary facts presented. I am fortified in this view as, conversely, if the Applicant had merely stated that she has a direct and substantial interest without alleging any material facts in support thereof, her submissions, at best, would be insufficient. This view is supported by the dicta in *Radebe and Others v Eastern Transvaal Development Board* 1988 (2) SA 785 (A) at 793.

[15] On the material facts before me, the Applicant does have a direct and substantial interest in the main application. I say this for two reasons.

(a) The first of which is deduced from the Second and Third Respondents' version in relation to the First Respondent (as Applicant in the main application) not having locus standi therein. At paragraph 3.2 of the Second and Third Respondents' answering affidavit in the main application (them being the First and Second Respondents respectively in the main application), it is expressly averred that the Applicant therein (the First Respondent herein) is not the owner of the property and therefore does not have the requisite locus standi. Therefore, the Applicant, as registered owner of the property, must have a direct and substantial interest in the matter.

(b) Secondly, and as a matter of common cause fact, the Applicant is the owner of the property which shares the boundary wall with the Second and Third Respondents. It can be noted that much is made, by the Second and Third Respondents, of the arrangement between the Applicant and the First Respondent, but I do not believe that anything turns on this.

[16] The Applicant has conceded that, at least in part, the present application has the effect of obviating any issue arising in relation to the Applicant not being a party to the main application. The Second and Third Respondents object to this and submit that the Applicant (and Second Applicant to be) in the main application should not be permitted to correct the technical issue raised by the Second and Third Respondents in the main application.

[17] I disagree. The prejudice which the Second and Third Respondents may suffer is not a consideration which falls into the equation for intervention. Even if the Second and Third Respondents are correct in their submissions relating to locus standi, there can be no argument to suggest that a party must be deprived of intervening in proceedings where that party has shown a direct and substantial interest, merely because it will defeat a technical defence raised by the other party.

[18] In regard to the loss of any technical defence raised by the Second and Third Respondents in the main application, a parallel can be drawn to the considerations of prejudice in amendment applications, where it has been held in *South British Insurance Co Ltd v Glisson* 1963 (1) SA 289 (D) at 294B-C that:

' ... the fact that the amendment may cause the respondent to lose his case against the applicant is not of itself "prejudice" of the sort which will dissuade the Court from granting it'.

[19] I have considered the existence of the pending action proceedings as well as the judgment of Sipunzi AJ (dealing with the application brought to refer the main application to a hearing of oral evidence) and find that the existence of both has no bearing on the current application. A defence of *lis alibi pendens*, whether raised in the main application or in the action, does not find application in the current matter and is best debated at either or both of those proceedings.

[20] Overall, I hold the view that it is ultimately in the interests of justice that the parties be entitled to ventilate their case at the hearing of the main application. While there may be a time and place for technical objections, surely, the court hearing the main application must consider the case on its merits, and rule on the true material disputes between the parties to see that justice is done.

[21] Accordingly, the Applicant is given leave to intervene in the main application.

[22] It therefore follows that the Applicant, being the new party in the main application be permitted to have her version placed before the court. While I do acknowledge that the delivery of further affidavits does disrupt the flow of proceedings in the main application and carries with it the likelihood to create an unwieldy set of papers at the eventual hearing, on balance the interests of justice are best served by permitting a proper ventilation of the issues at the cost of additional pages in an already voluminous application.

[23] As to costs, I am of the view that the application ought to have never been opposed. The grounds for opposition set out in the answering affidavit are not convincing, to say the least. This being said however, the Applicant (who is represented by the same attorneys as the Applicant in the main application) is seemingly, at least in part, attempting to guard against that as a possible technical ruling in the future.

[24] In the circumstances, the costs of the intervention application shall be costs in the cause of the main application.

### **Order**

[25] In the result, the order which I make is as follows:

1. The late filing of the Second and Third Respondent's heads of argument is

condoned. There is no order as to costs in respect of the condonation application.

2. The Applicant, Logashini Isaac is given leave to intervene in the main application under case number 06418/2022 and is granted leave to join as the Second Applicant in the main application.

3. The founding affidavit of the Applicant in the intervention application, Logashini Isaac, dated 19 February 2024, shall stand as a supplementary founding affidavit in the main application.

4. The Second and Third Respondents in the intervention application, being the First and Second Respondents in the main application, shall be entitled, within 15 days of the granting of this order, to deliver a supplementary answering affidavit, dealing with the facts and allegations contained in the aforesaid supplementary founding affidavit.

5. The Applicant (then being the Second Applicant in the main application) shall deliver her reply, if any, within 10 days of delivery of the aforesaid supplementary answering affidavit.

6. The costs of the intervention application shall be costs in the cause of the main application.

**BOND AJ**

HEARD ON :10 DECEMBER 2024

DELIVERED ON: 14 JANUARY 2025

PARTIES:

APPLICANT: Mr E Mizrachi

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1<sup>ST</sup> RESPONDENT: No Appearance



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