IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: 22782 / 2016
& Case Number: 7590 / 2017

In the matter between:

PETRONELLA DU TOIT	Plaintiff
and	
HILDA ALETTA COETZE N O	First Defendant
HILDA ALETTA COETZE	Second Defendant
NAOMI KRUGER	Third Defendant
REGISTRAR OF DEEDS	Fourth Defendant

Coram: Wille, J

Heard: 9th February 2021

Delivered: 22th February 2021

JUDGMENT

WILLE, J:

Introduction

[1] These are action proceedings concerning a dispute relating to the sale and transfer of certain immovable property.[1] The plaintiff alleges that she purchased certain immovable property[2], from the late Mr Coetze on the 25th of November 2013. The plaintiff seeks an order of specific performance for the transfer of the property into her name. Mr Coetze passed away before the property could be transferred into the plaintiff's name, which in turn triggered this litigation together with a number of connected application proceedings between the parties. Some of the averments made in the connected application proceedings are germane to these action proceedings.

[2] The first defendant is the executrix in and to the estate of the late Mr Coetze, cited in her capacity as the executrix of their joint estate. The second defendant is the surviving spouse of Mr Coetze cited in her personal capacity as the surviving spouse of her former marriage in community of property, to the late Mr Coetze. The third defendant is the ex-wife of the deceased and the fourth defendant is the registrar of deeds. The third defendant takes no part in these

[1] The main action
[2] The remainder of Portion 7 of farm number 737, Winelands Municipality, Paarl ('the property')

proceedings. The fourth defendant has no objection to the relief sought by the plaintiff. The first and second defendants shall be referred to as the defendants.

The Plaintiff's Case

Mr de Waal

[3] Mr de Waal testified as an expert. He is a practicing attorney and specializes in the area of conveyancing and deceased estates. He has considerable experience in both these fields in that he has been an attorney for the last (33) years. He familiarized himself with the content of the plaintiff's bundle of documents and the pleadings between the parties prior to his testimony.

[4] He concentrated on (2) of the defences raised by the defendants. Firstly, the defence that the sale agreement was alleged to be non-compliant with the formalities required in terms of the Alienation of Land Act[3]. Secondly, the defence that the late Mr Coetze was not entitled to sell the property without the consent of his ex-wife.

[5] He testified about the provisions of section 45 (bis) of the Deeds Registries Act.[4] In this connection, he opined that the transfer of an undivided half share of the property to the plaintiff, together with a section 45 (bis) endorsement of the other undivided half-share, may be lodged and transferred as one simultaneous

[3] Act 68 of 1981
[4] Act 47 of 1937

transaction in the Deeds Registry.[5] As an aside, on the issue of payment of the purchase price for the property, Mr de Waal testified that the conveyancer attending to the transfer was merely obliged to certify that the purchase price had been paid, this prior to registration of transfer.

[6] The section 45 (bis) application, uniquely only requires the signature of the person who is the applicant in terms of the said section. In short, in his view, there were no impediments preventing the registration of the transfer of the property into the name of the plaintiff.

Mrs du Toit

[7] The plaintiff testified that she was employed as a production manager at a pottery enterprise situated in Brackenfell.[6] She testified that the deceased suffered a major set-back on his farm during 2010 due to an outbreak of swine-flu which decimated a large portion of his pig farming business. The deceased also fell into substantial arrears in connection with the payment of his electricity supply with Eskom.

[8] As a direct result of these financial difficulties, her husband had advanced vast sums of money to the deceased to keep his business buoyant. In order for this financial position to be better secured her husband sought to conclude (2) written agreements with the deceased. Firstly, a lease agreement was concluded

[5] The section 45 (bis) endorsement, would merely be marked number (1) at the time of lodgment
[6] This until at least 2019

between her husband and the deceased so that the electricity supply could be restored to the property. Secondly, a sale agreement was concluded between the deceased and the plaintiff for the purchase of the property. It is this second sale agreement which is the subject of severe assail by the defendants.

[9] Significantly, both these agreements were concluded and reduced to writing on standard form documents[7], purchased from a stationer. Notarized copies of both of these agreements were handed in and marked as exhibits 'A' and 'B' respectively. Both the agreements appear on (1) single piece of paper, folded in the centre. The point being that there were no separate pages to these agreements.

[10] The lease agreement was signed early in the morning on the 25th of November 2013.[8] On the very same day, one of the original lease agreements was submitted to Eskom so that arrangements could be made to restore the electricity supply to the property. The second defendant signed as a witness to this lease agreement.

[11] As far as the sale agreement is concerned, same was signed and witnessed by the deceased on the same morning. The deceased and the first defendant thereafter proceeded to the work-place of the plaintiff[9], to have the sale agreement

[7] Template pro-forma agreements
[8] Two originals were completed and signed
[9] In Brackenfell

signed by the plaintiff.[10] The plaintiff's husband also proceeded to his wife's workplace to sign as a witness to the sale agreement. The sale agreement was signed by the purchaser at her workplace. The agreement was simultaneously witnessed by the second defendant and the plaintiff's husband. Significantly, the sale agreement was never submitted to Eskom as there was no reason to do so.

[12] In terms of the sale agreement, the plaintiff also accepted responsibility for payment of the rates and the bond instalments over the property, pending registration of transfer of the property into the name of the plaintiff. Neither the plaintiff, nor her husband resided on the property. The plaintiff's husband carried out farming operations on the property on an almost daily basis.

[13] The second defendant resided in the main house on the property and still so resides.[11] The reason for the citation of the plaintiff as the purchaser on the sale agreement, was simply because the plaintiff is married out of community of property to her husband, and they for business reasons, placed all their unencumbered assets into the plaintiff's name.

[14] She testified that the sale agreement had nothing to do with Eskom and that the defendants' defence on this score was simply not understood. She further testified that the third defendant had been paid all the monies due to her in connection with the disposal of her undivided half-share in and to the property.

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[10] As the purchaser
[11] Not in a 'container' in the property as suggested in a prior affidavit

This was done so that she could ultimately acquire the entire property from the deceased.

[15] Her comment was sought in connection with an allegation made by the second defendant[12], to the effect that the second defendant stated that she lived in a container on the property. According to her, this was untrue as she frequented the property and the second defendant resided in the main house on the property.

Mr du Toit

[16] Mr du Toit is married to the plaintiff. He reached an agreement with the deceased to assist him in the farming operations on the property with effect from October 2016. The deceased suffered a major financial set back due to the outbreak of swine-flu on the property during October 2010. The deceased had farmed predominantly with pigs at that time. Mr du Toit commenced advancing funds to the deceased to assist him during these financially uncertain times.

[17] Eventually, he closed down his mechanical business in order to farm full-time in partnership with the deceased. The deceased became divorced from the third defendant during the latter part of 2012. By that stage, Mr du Toit had advanced substantial funds to the deceased and had also invested heavily in the farming operations with the deceased in terms of their agreement.

[12] In an effort to avoid a sequestration application

[18] Mr du Toit deemed it prudent to reduce his loan arrangements and the arrangements regarding his joint farming venture with the deceased, to writing. The parties signed a written document in this connection.[13] The terms of agreement reflected in this document do not seem to be in dispute, save for the interpretation of certain clauses in the agreement. In essence, the agreement recorded that certain monies were due to the third respondent for her half-share in and to the property. Further, the agreement in broad terms set out the farming arrangements between the deceased and Mr du Toit.

[19] During this time, the deceased also experienced some difficulties with Eskom in connection with the electricity supply to the property. The deceased fell into arrears with his payments on his electricity account and his electricity supply to the farm was terminated by Eskom. The deceased illegally re-connected the electricity supply without the knowledge and consent of Eskom. Eskom technicians subsequently discovered this illegal connection. The electricity supply to the property was thereafter disconnected in a secure manner thereby rendering it impossible to once again connect the electricity supply illegally.

[20] The property needed to be supplied with electricity and accordingly Mr du Toit got involved. He met with certain Eskom personnel and it was discovered that indeed a vast sum of money was owed to Eskom. A reduced indebtedness of R326 000,00 was subsequently negotiated to be the agreed amount outstanding. He was advised that the only manner in which he could get the electricity supply

[13] During March of 2013

re-connected would be for him to lease the property from the deceased, so that a new account could be opened in his name.

[21] This in turn, prompted him to deal with both the electricity issue and the ultimate purchase of the farm in a more formalised manner. He went to a shopping complex in order to purchase a standard form lease agreement and a standard form sale agreement. He was able to purchase the lease agreement but was unable to purchase a sale agreement as the said stationer was in short supply of the latter.

[22] On the morning of the 25th of November 2013, he met with the deceased at his home on the property at about 07h00. Two original lease agreements were completed and signed. One of the original lease agreements was handed over to Eskom on the very same day in order that the electricity supply could be reconnected as soon as possible.

[23] A notarized copy of the remaining original is before the court as exhibit 'A'. Mr du Toit proceeded to drop his wife at her place of employment in Brackenfell and thereafter met with the Eskom officials in order that the electricity supply could be restored. He also went to purchase two original sale agreement documents.

[24] Both these sale agreements were completed later the same day at the home of the deceased. Both were signed by the deceased and both were witnessed by

Mr du Toit and the second defendant. Thereafter, they all then proceeded to the work-place of the plaintiff and the documents were signed and witnessed in her presence and in the presence of the witnesses thereto. Mr du Toit corroborates his wife's evidence in this connection.

[25] The purchase price of R(1) million, together with the obligation to settle the outstanding bond, was a suggestion made by the deceased. The deceased also remarked that this nominal purchase price would have the effect of reducing the transfer duty so as to facilitate the registration of the property into the name of the plaintiff. The sale agreement records that the purchase price had already been paid and provided that registration of transfer would be effected when the plaintiff was in the financial position to do so. This, after settlement of the mortgage bond registered over the subject property.

[26] The defence raised by the defendants to the effect that the sale agreement was signed to defraud Eskom was dismissed by Mr du Toit for two reasons. Firstly, Eskom only required a lease agreement and not a sale agreement. Secondly, the sale agreement was never presented to Eskom and remains so unpresented.

[27] The allegation by the second defendant in order to avoid the consequences of her sequestration application bears scrutiny. Mr du Toit frequented the property literally every single day and the second defendant has always resided in the main house on the property and she did not reside in a container as alleged by her. Coupled with this, the allegation that the plaintiff lived in the property was

also devoid of all truth. She resides with Mr du Toit in Kraaifontein and she has done so for the last (20) years and still so resides.

[28] The cross-examination of Mr du Toit was of no moment. It focused primarily on attempting to create a dispute in connection with the amounts loaned and advanced to the deceased. Also, the amounts Mr du Toit invested into the business of the farming venture were placed in dispute. On the core issue of the signing of the sale agreement it was suggested that the agreement was signed at the home of Mr du Toit at 15h00 on the 25th of November 2013. Nothing more and nothing less. No engagement followed about the alleged different pages of the agreement. This was after all the foundation of the second defendant's defence advanced in the defendants' amended plea.

[29] As far as the payment to the third defendant was concerned, it was initially conceded by the defendants that all these payments due were received by the third defendant. This concession was later retracted on the basis that same was incorrectly tendered. Nothing turns on this for two reasons. Firstly, it hardly lies in the mouth of the defendants to dispute the extent of the payments to the third defendant. Secondly, the third defendant deposed to an affidavit confirming that she had been paid in full. In addition, documentary proof was submitted to the effect that the third defendant had been paid for her undivided half-share in and to the property.

Mr van Blerk

[30] This was the final witness to be called on behalf of the plaintiff. He is a practising litigation attorney with some standing of (40) years. He is the attorney for the plaintiff. He testified about two collateral aspects in connection with two connected applications to the action proceedings. Firstly, an interdict application was launched by the plaintiff to prevent the second defendant from alienating the property pending the outcome of the action proceedings. Secondly, he commented on certain disputes created by the second defendant to avoid a sequestration order being granted against her.

[31] With regard to the former, a costs order was obtained against the second defendant which was subsequently taxed and allocated by the taxing master. When same was not paid, the plaintiff launched a sequestration application. In order to create a dispute in connection with these allocated taxed costs, the second defendant belatedly alleged that the agreement that the second defendant would be liable for the costs of (2) counsel was obtained by deceit at the hands of the plaintiff's counsel.

[32] Mr van Blerk testified that the dispute created by the second defendant was buttressed by dishonesty. Never had this issue ever arisen during the taxation. To the contrary, at the taxation, certain amounts in connection with counsel's fees were taxed off, by agreement. According to him, the two versions offered up by the second defendant are simply irreconcilable on this score. Curiously, this dispute only featured for the first time, about (2) years after the

taxation of the costs had been finalized. More significantly, an allegation was made to the effect that the order which recorded the agreement in connection with the payment of the costs of (2) counsel, would form the subject of a rescission application. Not surprisingly, no such application has been launched.

The Defendants' Case

Mrs Coetze

[33] She met the deceased in and during September 2013. Within days of becoming acquainted with the deceased she moved in with him lock, stock and barrel. They were married in community of property about (7) months later. She remained unemployed but testified that she did assist the deceased with certain administrative duties on the farm. She confirmed that the deceased and Mr Du Toit were business partners in so far as this related to the farming operations on the property. She held the view that the deceased only wished to sell half of his farm to the plaintiff. She held no factual basis for this belief.

[34] She testified that she only signed as a witness to either the lease agreement, or the sale agreement at the home of the plaintiff. This occurred in Kraaifontein. According to her the lease agreement was not signed on the property and the sale agreement was signed in Kraaifontein. She never went to the plaintiff's place of employment in Brackenfell. These allegations do not at all sit well with the factual evidence buttressed by the signatures as set out in the two

agreements. She conceded that she did not apply her mind to the content of any of the agreements when she signed as a witness.

[35] Significantly according to her, the plaintiff was not present at the time of the signature of the sale agreement. Again, this does not sit well with the objective evidence gleaned from the lease agreement and the sale agreement. She was confronted about her allegation that the sale agreement was an orchestrated campaign merely to deceive Eskom so to restore the electricity supply to the property. Her version on this score leaves a lot to be desired in view of the fact that she did not bear any knowledge of the agreements, to which she bore witness.

[36] She was asked to comment on the various defences raised in her plea. At best for her, she could not explain why these defences were raised. As a last resort she placed the blame for this on her attorneys of record. She was unable to explain the shield raised in connection with the missing pages of the sale agreement when same was allegedly signed. This in the context of the objective evidence that the sale agreement only consisted of (1) page. Not surprisingly, she was unable to offer up any explanation.

[37] She was driven to concede that Mr du Toit had indeed settled the amount due to the third respondent. This, in connection with the undivided half-share of the property registered in the name of the third defendant. She was also unable to dispute that Mr Du Toit continued to pay the mortgage bond instalments over the property, pending registration of transfer into the name of the plaintiff.

[38] She was a very poor witness. She was evasive and argumentative. When she found it difficult to answer relatively simple questions, her standard retort was to blame her attorneys. She also utilized the lay person defence frequently. This, surprisingly in connection with factual enquiries. She was asked to comment on certain aspects of her affidavit filed in opposition to her sequestration application. Some of her replies in this connection were simply astonishing to say the least. More about this later.

Mr Coetze

[39] He is the deceased's brother. This witness attempted to introduce evidence of a hearsay nature. This gallant attempt was met with an objection for want of a foundation for an exception to the rules of evidence. It subsequently became clear that the evidence sought to be tendered would have in any event been irrelevant. None of this evidence bore any relation to any communications with the deceased prior to the conclusion of the agreement of sale. Needless to say, this evidence was ruled to be inadmissible.

Discussion

[40] The defendants raised a number of defences to the action which were formulated in their plea. Firstly, the defendants averred that the sale agreement did not comply with the requirements of the Alienation of Land Act. Mr de Waal euthanized this defence when he testified that the deceased was entitled to have

entered into the sale agreement without the assistance of the third defendant. This legal position was accepted by the defendants.

[41] Secondly, the defendants raised a defence to the effect that the sale agreement consisted of (4) pages of which, only the last page was presented to the deceased and the second defendant for signature. When confronted with the sale agreement, which consists only of (1) page[14] , the second defendant had no choice but to concede that the defences raised by her were untruthful. This defence was an opportunistic manoeuvre to attempt to cast doubt over the validity of the sale agreement.

[42] The second defendant further advanced that the plaintiff was not present when she signed as a witness to the plaintiff's signature. It would not have made sense to have recorded that the lease agreement was signed at the property, if it had been signed in Kraaifontein. Similarly, it would not have made any sense for the deceased to have recorded that he signed the sale agreement at the property and for the plaintiff to have recorded that she appended her signature in Brackenfell, if the sale agreement was signed at Kraaifontein. The probabilities are overwhelming that the agreements were signed at the places so recorded in the respective agreements.

[43] Thirdly, it is advanced that the sale agreement was champetas and entered into with the sole intention of defrauding Eskom. There is not an iota of evidence to support this allegation. It became apparent during the testimony of the second

[14] An A3 size single page, printed on both sides

defendant that she was not privy to the discussions between the deceased and Mr du Toit at the time when the sale agreement was signed. The second defendant was aware of the looming electricity issue with Eskom and that an agreement was entered into in order to have the electricity supply account transferred from the deceased to Mr du Toit. She could not dispute that a lease agreement was entered into for specifically for this purpose. She merely made an assumption that the sale agreement was entered into for the same purpose since it was signed on the same day as the lease agreement. This is precisely why she could not explain why the sale agreement was entered into with the plaintiff and not with Mr du Toit.

[44] The uncontested evidence by Mr du Toi was that only the lease agreement was handed to Eskom. Eskom entered into an electricity supply agreement with Mr du Toit and he thereupon made payments to Eskom in terms of such supply agreement. No reason existed for a sale agreement to be entered into between the deceased and the plaintiff for the same purpose. What also remains unexplained is the reason why Mr du Toit went to great lengths to settle the indebtedness of the deceased to his ex-wife. This was in order to acquire her undivided half-share in and to the property.

[45] Both the plaintiff and her husband testified about the facts and circumstances which culminated in the parties eventually entering into the sale agreement. This evidence was supported by contemporaneous notes made by Mr du Toit with reference to the payments made by the plaintiff in respect of the bond and rates over the property in terms of the sale agreement.

[46] The inescapable conclusion is that the defence of fraud was raised so as to avoid the consequences of a valid sale agreement. A litigant wishing to rely on fraud must prove it clearly and distinctly. The defendants' evidence falls far short from discharging this heavy onus.

[47] Finally, the defendants aver that the plaintiff should have submitted a claim to the first defendant as opposed to pursuing her action proceedings. It is common cause that the untimely demise of an owner of immovable property does not have the guillotine effect of rendering a validly executed deed of sale invalid. The executrix in and to the deceased estate steps into the shoes of the deceased and is obliged to give transfer to the purchaser, subject to a valid and binding agreement having been executed. Accordingly, it is not clear on what basis the defendants suggest that it would be necessary for the plaintiff to submit a claim to the first defendant. In these circumstances the plaintiff had already claimed transfer of the property and the first defendant had already rejected her claim in writing.

[48] Belatedly, in their heads of argument the defendants now raise a number of further purely technical defences. It is submitted that the sale agreement is an illegal agreement and that it falls foul of section 2 (1) of the Alienation of Land Act. These arguments may be dealt with swiftly. It is suggested that because the property was valued at a greater value than the purchase price, this is accordingly a fraud on the fiscus. Mr de Waal explained what the plaintiff would have to do

to obtain a transfer duty clearance certificate to obtain registration of transfer into her name. For this reason, this defence is still born.

[49] Further, it is suggested that the identity of the purchaser is problematic and accordingly the sale agreement does not comply with provisions of the Alienation of Land Act. To the contrary, the identity of the purchaser was and has never been in doubt. Similarly, this defence has no merit and the purported decided authorities cited by the defendants on this score, are singularly unhelpful.

[50] A further argument is now advanced that the purchase price has not been paid by the purchaser for the property. The sale agreement records that the purchase price has been paid save for the mortgage bond over the property that falls to be extinguished by the purchaser. The unassailable evidence is that the purchaser has been paying the bond instalments on a monthly basis, this with the acquiescence of the defendants. The purchaser will also as a matter of law need to extinguish the mortgage bond in order to be able to transfer the property into her name. This defence is unappealing, to say the least.

[51] In a last ditch effort to find some support for the defences raised by the defendants, it is suggested that the evidence by the second defendant was honest and consistent. It is suggested that she was confused and nervous when she testified in court. I disagree. This does not explain her untruthful statements made under oath in the various connected applications. As mentioned, she was evasive and argumentative which are hardly features attributable to a nervous witness.

Costs

[52] One of the fundamental principles of costs is to indemnify a successful litigant for the expense put through in unjustly having to initiate or defend litigation. The successful party should be awarded costs.[15] The last thing that already congested court rolls require is further congestion by an unwarranted proliferation of litigation.[16]

[53] It is so that when awarding costs, a court has a discretion, which it must exercise judiciously and after a due consideration of the salient facts of each case at that moment. The decision a court takes is a matter of fairness to both sides.[17] The court is expected to take into consideration the peculiar circumstances of each case, carefully weighing the issues in each case, the conduct of the parties as well as any other circumstance which may have a bearing on the issue of costs and then make such order as to costs as would be fair in the discretion of the court.

[54] No hard and fast rules have been set for compliance and conformity by the court unless there are special circumstances.[18] Costs follow the event in that the

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[15] *Union Government v Gass* 1959 4 SA 401 (A) 413.
[16] *Socratous v Grindstone Investments* (149/10) [2011] ZASCA 8 (10 March 2011) at [16].
[17] *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at 1055F- G
[18] *Fripp v Gibbon & Co* 1913 AD 354 at 364.

successful party should be awarded costs.[19] This rule should be departed from only where good grounds for doing so exist.[20]

[55] In *Potgieter*[21], a general rule was formulated that a personal order for costs against a litigant occupying a fiduciary capacity is justified where the conduct in connection with the litigation in question has been mala fide, negligent or unreasonable. The conduct of the fiduciary must evidence improper conduct which deviates from the standards of conduct to be expected of the fiduciary.[22]

[56] The plaintiff not only seeks a special punitive costs order, but also seeks this order against the attorneys representing the defendants. In support of this request, the following issues in connection with the expert evidence were emphasized; that the defendants had no basis in fact or law to disagree with the evidence of the expert regarding the validity of the sale agreement; that the plaintiff's expert notice was served as early as the 23rd of December 2020 and that the defendants' legal team made no effort to rebut or engage with this expert evidence.

[57] In connection with the defence raised by the defendants that the plaintiff's claim should have been submitted to the executrix, it is merely pleaded that the defendants surmise that this should have been done. No actual legal defence was

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[19] *Union Government v Gass* 1959 4 SA 401 (A) 413.
[20] *Gamlan Investments (Pty) Ltd v Trilion Cape (Pty) Ltd* 1996 3 SA 692 (C)
[21] *In re Potgieter's Estate* 908 TS 982
[22] *Vermaak's Estate v Vermaak's Heirs* 1909 TS 679 at 691

ever formulated and presented, which may be indicative of a degree of negligence on the part of the defendants' attorneys.

[58] After receipt of the summons and particulars of claim containing a copy of the sale agreement printed on (4) pages, the defendants pleaded that the agreement consisted of (4) pages and that the second defendant and the deceased did not receive pages (1), (2) and (3). Further, that page (4) was presented alone and signed under an alternative pretence. When confronted with the fact that the sale agreement consisted of a single page, the second defendant stated she and her attorneys had formulated this defence.

[59] The second defendant alleged that the sale agreement was drafted with the intention of defrauding Eskom and was an elaborate plan to dupe Eskom. The second defendant conceded that she and her attorneys had spoken about these matters and that any questions in this connection should be posed to her attorneys of record. These potentially ruinous allegations against Mr du Toit were made without any factual basis.

[60] During November 2016, the plaintiff applied for the granting of an urgent interdict to prevent the defendants from marketing, selling, encumbering or alienating the property pending the issuing of the summons and the determination of the present action in circumstances where the defendants had refused to provide an undertaking in this connection.

[61] The second defendant opposed the application and neglected to file any answering papers, this notwithstanding the postponement of the matter for a period of nearly (3) months and an agreement on a timetable to afford her an opportunity to do so. The relief sought by the plaintiff, including the costs of (2) counsel, was subsequently granted by agreement between the parties.

[62] In opposing a subsequent sequestration application[23], the second defendant deposed to an affidavit in which she alleged, inter alia, the following; that an agreement was reached in the interdict application between the plaintiff's junior counsel and the second defendant's counsel that only the costs of (1) counsel would be allowed and that the costs of (2) counsel was provided for by deceit in the order, notwithstanding this agreement; that **c**ounsel for the second defendant would obtain permission to depose to an affidavit confirming the agreement if necessary; that the second defendant's attorney was not present at the taxation due to an administrative oversight and that an application for a rescission of the order was in the process of being drafted on the basis that no agreement was reached for the award of the costs of (2) counsel.

[63] In the same affidavit, the second defendant alleged that the plaintiff was fully aware that the second defendant resided in a container, on the property as the plaintiff resided on the property. Further, that the plaintiff was fully aware of these facts when she launched the sequestration application and was intentionally economical with the truth and was driven by an ulterior motive to attach the property. This, by means of the insolvency process.

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[23] Launched as a result of the defendant's failure to pay the taxed costs in the interdict matter

[64] Mr van Blerk, refuted the allegations regarding the agreement in connection with the costs of (2) counsel and the allegation that the second defendant's attorney did not attend the taxation. The second defendant was driven to concede that the allegations made by her regarding to living in a container were also untrue. From an evaluation of the evidence, regretfully it seems apparent that the second defendant has been a stranger to the truth on many occasions during the course of this unfortunate litigation between the parties.

[65] I was informed at the commencement of the trial that the plaintiff would not persist with the her application to declare last will and testament of the deceased to be invalid.[24] The first defendant opposed this relief notwithstanding the fact it was admitted that the deceased's last will and testament did not comply with certain formalities set out in sections 2(1)(a)(ii) and 2(1(a)(iii) of the Act.[25]

[66] Shortly before the scheduled hearing of this application, the first defendant filed a conditional counter-application seeking an order declaring the will to be the last will and testament of the deceased. As I understand matters, if the plaintiff is successful in these action proceedings, then the validity of the deceased's last will and testament, together with the appointment of the first defendant as the executrix in and to the deceased's estate, will be of academic interest to the plaintiff, save for costs.

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[24] This instituted by way of a discrete application
[25] Wills Act 7 of 1953

[67] In all the circumstances of the matter, I hold the view that a punitive costs order in this matter is warranted for some of the reasons set out in my judgment. I am not persuaded that any costs order should be granted against the defendants' attorneys. Whilst I do harbour some deep suspicions about their alleged conduct during the course of this litigation, I cannot visit the second defendant's lack of candour on her attorneys, absent further evidence. That having been said, it must have dawned on the defendants shortly after the filing of the plaintiff's expert notices that the shields that they had raised in the form of their defences to the plaintiff's action were doomed to failure. It is for this reason that a portion of the costs awarded in this matter will be on the scale as between attorney and client.

[68] In the result, the following order is granted;

1. That the first defendant is ordered and directed to pass transfer of the following immovable property ('the property') to the plaintiff, namely:-

> *'Portion 7 of farm number 737, Winelands Municipality, Paarl Division, Western Cape, held under title deed T 90422 / 2011, in extent 6,3954 hectares, better known as Farm Eindbegin, Protea Road, Klapmuts'*

2. That the first defendant is ordered and directed to sign all the necessary and required documents and take all such necessary

steps as may be required to effect registration of the transfer of the property into the name of the plaintiff.

3. That in the event that the first defendant fails or neglects to comply with the steps as set out in paragraph (2) as set out above, within (7) days after being requested to do so, then in that event, the Sheriff of the High Court (Cape Town, West), is hereby authorized to sign all such documents and take all such necessary steps to effect registration of transfer of the property into the name of the plaintiff.

4. That the first and second defendant, jointly and severally, the one paying the other to be absolved, shall be liable for the costs of and incidental to the action on a party and party scale (including costs of two counsel where so employed), as taxed or agreed, from the inception of this matter until the last day of December 2020.

5. That the first and second defendant, jointly and severally, the one paying the other to be absolved, shall be liable for the costs of and incidental to the action on an attorney and client scale (including costs of two counsel where so employed), as taxed or agreed, from the 1st of January 2021 and thereafter. These costs shall include the qualifying expenses and costs of and incidental to the testimony of Mr de Waal, as an expert witness.

6. That in the event that the parties are unable to amicably resolve all the costs issues in connection with the plaintiff's application relating to the validity or otherwise of the last will and testament of the deceased, then in that event, either party is hereby authorized to enrol the latter application (for hearing before Mr Justice Wille), on notice, on the same papers, supplemented in so far as may be necessary, for the determination of the costs of and incidental to the plaintiff's application relating to the validity or otherwise of the last will and testament of the deceased.

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E. D. WILLE

Judge of the High Court