




IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 16019/2021

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
 SIGNATURE	
14/04/2021 DATE	

In the matter between:

GIDEON FANECKY SILAULE

Applicant

v

BOSSILS CIVILS AND MAINTENANCE (PTY) LTD

First Respondent

CHRISTIAAN JOHAN BOSHOF

Second Respondent

ANN-MARIE BOSHOF

Third Respondent

VAN'S AUCTIONEERS PRETORIA

Fourth Respondent

JUDGMENT

MOSOPA, J

1. This urgent application brought in terms of Rule 6(12) of the Uniform Rules of Court, seeks to interdict the respondents from auctioning and selling the moveable assets situated on Plot 44, as depicted on the website of the fourth respondent. The auction is scheduled to take place from 7 April 2021 to 9 April 2021, pending the application to be brought by the applicant to declare the conduct of the second and third respondents oppressive and prejudicial in terms of section 163 of the Companies Act 71 of 2008.
2. The matter was before me on 7 April 2021, for argument and I promised to deliver judgment on 8 April 2021 at 09h30. I furthermore instructed counsel to inform the fourth respondent not to proceed with the auction until this matter is finalized.

URGENCY

3. I found the matter to be urgent, as I was of the view that if I did not hear the matter, the applicant would not be afforded substantial redress at a hearing in due course, because this matter concerns the sale of moveable assets which is supposed to take place during the course of this week (see Rule 6(12)(b) of the Uniform Rules of Court; ***Luna Meubel Vervaardigers(Edms) Bpk v Makin t/a Makin Furniture Manufacturers 1977 (4) SA 135 (W) at 339E-H***).

BACKGROUND

4. The applicant is a director and a 51% shareholder of the first respondent. The second and third respondents are also directors and minority shareholders of the first respondent.
5. The core business of the first respondent is rendering grass cutting services. The applicant was appointed as director of the first respondent on 18 July 2018, the second respondent was appointed on 27 August 2018 and the third respondent was appointed as non-executive director of the first respondent on 23 August 2018.

6. When the applicant became aware of the intended auction of 7 to 9 April 2021, he consulted with his legal representatives and as a sequel to such a legal consultation, his legal representatives addressed a letter to the representatives of the fourth respondent, in an attempt to stop the intended auction.
7. The representative of the fourth respondent informed the applicant's legal representatives that unless she receives instructions from the seller – who I presume is the second and third respondents – to stop the auction, she will proceed with the intended auction. It appears that the second and third respondents did not instruct the fourth respondent to suspend the auction, hence the matter is now before me.

ISSUE FOR DETERMINATION

8. The only issue for me to determine is whether the applicant is legally entitled to interdict the auction from taking place.
9. The defense raised by the second and third respondents is that the moveable assets to be auctioned do not belong to the first respondent and as such, the applicant is not legally entitled to interdict the auction from proceeding.
10. The second and third respondents raised a point-in-limine that the applicant's annexures were not initialed and the effect thereof was that they were not properly before court. The fact that the second and third respondents dealt with these annexures in their answering affidavit and in their contention in court, despite the legal objection raised, I am inclined to consider such annexures for the purpose of determining this application.
11. The applicant contends that he compared the list of moveable assets of the first respondent and the moveable assets depicted in the photographs on the website of the fourth respondent, which are to be sold in the auction. It is on this basis that he states that those are the assets of the first respondent. I

must at this stage pause to mention that the assets, as listed on annexure "GFS 11" of the applicant's founding affidavit, are not the only moveable assets up for auction by the fourth respondent, but forms part of the assets to be sold on auction.

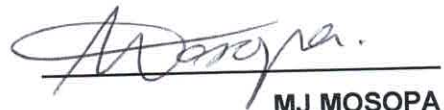
12. If what the applicant is alleging is found to be correct, then there can be no basis for the auction to proceed, as the applicant, as a director and a majority shareholder, was not part of the decision made to sell such moveable assets of the first respondent. Furthermore, there was no resolution of the first respondent authorizing the sale of such moveable assets. The second respondent contends that these assets belong to him and not to the first respondent, and the list of assets was given to the applicant solely for the purposes of raising money for the applicant to buy shares in the first respondent.
13. The second and third respondents contend that the list which the applicant relies on and bases his comparison on, is an old list which was compiled in 2018. In annexure "CJ 2" to the respondents' answering affidavit, the respondents explain how the assets which appear on the list the applicant relies on were dealt with. From this it is apparent that the list the applicant relies on is in fact the list which comprises of the assets of the first respondent, save for those assets which belong to other companies.
14. The question then arises, whether, based on the above, it can be found that the list of assets relied upon by the applicant is exactly the same as the assets to be sold by the fourth respondent. There is, for example, a John Deere tractor on the applicant's list and a John Deere tractor on the photograph of assets to be sold, but can one say with certainty that it is the same item?
15. In my considered view, the applicant, after becoming aware of the intended auction and being responsible for the operational side of the first respondent's business, could have visited the fourth respondent or alternatively, the place where these assets are held, to satisfy himself that such assets indeed belong to the first respondent. He would be able to identify these assets, as he

worked with them on a daily basis. There are registration numbers for vehicles and trailers listed on annexure "GFS 10" which should have been compared with the moveable assets in possession of the fourth respondent, as these registration numbers are not visible on annexure "GFS 11". There are no serial numbers or registration numbers provided for the other assets listed in annexure "GFS 10" and it is difficult to say that this corresponds to the assets listed.

16. Based on the above, I see no legal justification for interdicting the auction to be conducted by the fourth respondent. The applicant, in my considered view, failed to make out a proper case to interdict said auction and the application must, for that reason, fail.

17. In the consequence, I make the following order:

1. The applicant's application is dismissed, with costs.



MJ MOSOPA
JUDGE OF THE HIGH
COURT, PRETORIA

Appearances:

For the applicant: Adv MJ Kleyn
Instructed by: Naude Dawson Attorneys

For the respondent: Mr M Klein
Instructed by: Matthew Klein Attorneys

Date of hearing: 8 April 2021
Date of judgment: 9 April 2021