REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 9613/2022
REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: YES/NO
REVISED

In the matter between:

MAITE VIRGINIA SETSHEKGAMOLLO	**FIRST APPLICANT**
MOLIBATSI SETSHEKGAMOLLO	**SECOND APPLICANT**
CLASSIC ADMINISTRATORS (PTY) LTD	**THIRD APPLICANT**

And

MAJANG INCORPORATED ATTORNEYS	**FIRST RESPONDENT**
SHERIFF SEKGOSESE	**SECOND RESPONDENT**
SEWATUMONG MICRO LENDING CC t/a SEWATUMONG CASH LOANS	**THIRD RESPONDENT**
SETLAKALA GILBERT SETSHEKGAMOLLO	**FOURTH RESPONDENT**

JUDGMENT

KGATLA AJ

Introduction

[1] This is an urgent application in terms of Rule 6 (12) of the Uniform Rules of court wherein the Applicants seek an order interdicting the second respondent ("sherfiff") from proceeding with the sale in execution of the Hyundai H1 (Registration number: DVF […]), Brown leather sofa with glass table, LG Plasma TV, Speed Queen Automatic Dryness Control, Trojon Ignite350 Microwave, Brown sofa with coffee table and Samsung four door fridge.

[2] In addition, the applicants seek an order to direct the sheriff to immediately release the aforesaid assets from attachment and give possession thereof to the applicants free from any fees and to declare that the movable assets do not belong to the first and second respondents and that they belong to the applicants respectively. The application is opposed by the first respondent on the basis that the matter is not urgent and that the applicants have failed to provide satisfactory evidence of ownership.

Factual background

[3] The first respondent represented the first applicant, third and fourth respondents in protracted legal proceedings instituted by the National Credit Regulator. During March 2022, the third and fourth respondents fell in arrears with the payment of the legal fees and as a result, the first respondent instituted a civil claim for payment of the arrears which ultimately resulted in the first respondent obtaining judgement against the third and fourth respondents. The first respondent instructed the sheriff to demand payment to satisfy the warrant of execution. On 09 June 2023, the sheriff visited the residence of the first and second applicants and served the applicants with a writ of

execution listing the property to be attached for the satisfaction of the third and fourth respondents' debt. Suffice to mention at this stage that the fourth respondent was married to the first applicant and have since divorced which decree of divorce was granted on 20 October 2022. In the settlement agreement signed by the two, it is recorded that there was no immovable property registered in their personal names.

[4] Upon the visit by the sheriff, the first applicant wrote an email to the first respondent informing her that some of the assets listed on the writ of execution belonged to the applicants. The first respondent asked for proof of ownership and the first applicant sent the first respondent an email attaching a title deed to the effect that the house belonged to a Nenyane trust ("trust"). In the email, the first applicant informed the first respondent that proof of ownership of immovable properties could not be provided as same were acquired long ago.

[5] On the 08 August 2023, the sheriff visited the applicants' place again and this time he removed the Jeep and served a notice of sale to the effect that the Jeep and all other movable assets will be sold on the 31 August 2023 at a public auction. I mention that the Jeep belongs to the fourth respondent as such does not form part of the assets affected. The visit by the sheriff prompted the first applicant to bring this application on her behalf and on behalf of the trust. The second applicant is the first applicant's daughter who is alleged to be the owner of 8 kg speed queen dryer LDE3TRG whilst the third applicant is a private company which owns the Hyundai H1.

The applicable principles on urgency

[6] Rule 6(12) (b) of the Uniform Rules of court requires applicants, in all affidavit filed in support of urgent applications, to set forth explicitly the circumstances which render the matter urgent; and the reasons why the claim that they cannot be afforded substantial redress at a hearing in due course

[7] The principle in this regard is set out in the case ***East Rock Trading 7 (Pty) Limited and Another v Eagle Valley Granite (Pty) Limited and Others***[1] wherein Honourable AJ Notshe stated the following:

> *" The import thereof is that the procedure set out in Rule 6(12) is not there for taking. An Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress."*

[8] The Applicants contend that this matter is urgent on the basis that on or around 09 June 2023, the sheriff served her with a writ of execution indicating that the assets listed thereon are placed under attachment pursuant to the judgement granted against the third and fourth respondents. The assets listed on the writ of execution are located at the first applicant 's place of residence owned by the trust, wherein she resides with the second applicant. That upon receipt of the writ of execution, the first applicant initiated communication with the first respondent informing the first respondent that some of the assets in the writ belong to the first and second applicants and that she will send proof thereof. That the first respondent responded to the first applicant's email and requested proof of ownership on or before 21 June 2023. On the same day, the first applicant sent an email to the first respondent attaching title deed to the effect that the house visited by the sheriff belongs to the trust. In the email, the first applicant further informed the first respondent that proof of ownership of the immovables could not be provided as the assets have been bought long time ago.

[9] According to the first applicant, she initiated communications as she believed that the matter was capable of being resolved because the first respondent indicated

[1] (2012) JOL 28344 (GSJ) at para 6

their undertaking to consider the documentary proof sent by the first applicant. However, urgency was triggered on 08 August 2023 when the sheriff visited her place of residence and removed the Jeep, an asset of the fourth respondent and all other movable assets listed on the writ of execution, including the first and second applicants assets. Lastly, the applicants submitted that they will not have substantial redress in future as the sale is scheduled to take place on 31 August 2023.

[10] The first respondent contends that the matter is not urgent because the applicants knew about the writ of execution as far as 09 June 2023, that there was no mediation process which took place between the parties and further that in any event, the first respondent will still have substantial redress because all assets acquired during the duration of the marriage form part of the joint estate and are available to be sold for purposes of judgment debt. That if the listed assets are sold, the first applicant can still settle her personal claim with the fourth respondent in accordance with the applicable laws at her disposal.

[11] The first respondent further contended that as far back as 21 June 2023, the first respondent has been requesting the first applicant to provide proof under oath showing that all attached movable property are indeed registered and belong to the applicants. The applicants took no steps to obtain legal representation and proceed by way of interpleader proceedings in order to proof ownership. That the first sale in execution was scheduled for 27 July 2023 however the sale did not proceed and as such the fact that the sale did not proceed gave the applicants time to institute the necessary proceedings and prove ownership, however the applicants failed to do so.

[12] In applying the principles relating to urgency as stated above to the facts of the matter, I point out that the determination of whether a matter is urgent involves two considerations, first, whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. On analysis of the applicants' reasons for urgency that upon the visit by the sheriff at their place of residence on 09 June 2023 with the writ of execution, the first

applicant sent an email to the first respondent on 20 June 2023 informing the first respondent that some of the assets on the list of the writ of execution are not that of the fourth respondents and the fact that the first respondent responded to the first applicant's email and requested proof of ownership of the assets by no later than 21 June 2023 which the first applicant responded on the same day by attaching a tittle deed to the effect that the immovable property that the sheriff visited belonged to the trust and further informing the first respondent that proof of ownership of the contents in the house could not be furnished as the contents were purchased a long time ago. I find that parties were communicating as argued by the first applicant.

[13] The first respondent further stated that as a result of the communication between herself and the first respondent, she considered the matter resolved alternatively prospects of having it resolved as the first respondent indicated their undertaking to consider the documentary proof sent. I have noted that, after the first applicant sent the email to the first respondent, the first respondent did not respond and or communicate with the first applicant further. Based on that, the first respondent 's assumption that the matter was resolved and or there were prospects of having it resolved is justified.

[14] On the second requirement, the first applicant argued that the applicants have no other alternative relief available to them other than approaching this court. On the other hand, the first respondent stated that the applicants should have followed the interpleader process. The first respondent further argued that the first applicant has an alternative relief as she can still claim from the fourth respondent. According to the first respondent, only the first applicant has an alternative remedy. I point out at this stage that the certificate of registration of the Hyundai reflects that the third applicant is the owner thereof. Submissions were further made that Dryer and the Samsung four door fridge belonged to the first and second applicants respectively. Based on this, I find that the applicants will not have substantial redress in future if the matter is not heard on an urgent basis, this matter deserves the urgent attention of this court.

Should an interdict be interdict?

[15] Now this bring me to the question of whether the applicants have made out a case for the relief sought. The applicants are seeking a final interdict. The Supreme Court of Appeal in the case of ***National Council of Societies for the Prevention of Cruelty to Animals v Openshaw***[2] held that an interdict is not a remedy for past invasion of rights but is concerned with the present or future infringements, it is appropriate only when future injury is feared. The requirements for a final interdict as set out in ***Setlogelo v Setlogelo***[3] are: a clear right, an injury actually committed or reasonably apprehended and the lack of an adequate alternative remedy.

[16] In proofing the first requirement, the applicants have submitted that the Hyundai H1 to be sold is registered under the third applicant. The certificate of registration in respect of motor vehicle confirms this submission. It is trite that possession of the registration paper is *prima facie* proof of ownership. The South African ownership of motor vehicle is regulated in terms of the National Road Traffic Act. Section 1 of the National Road Traffic Act[4] defines ownership of a motor vehicle and as follows:

> "*(xiv) "owner", in relation to a vehicle, means-*
>
> *(a) the person who has the right to the use and enjoyment of a vehicle in terms of the common law or a contractual agreement with the title holder of such vehicle;*
>
> *(b) any person referred to in paragraph (a), for any period during which such person has failed to return that vehicle to the title holder in accordance with the contractual agreement referred to in paragraph (a); or*
>
> *(c) a motor dealer who is in possession of a vehicle for the purpose of sale,*

[2] 2008 (5) SA 339 at para 20
[3] 1914 AD 221
[4] 93 of 1996

and who is registered as such in accordance with the regulations under section 4, and "owned" or any like word has a correspond meaning."

[17] In addition, the applicants submitted that the dryer as well as for the Samsung fridge are assets of the first and second applicants. To support this submission, the applicants submitted a tax invoice issued by Hirsch's furniture shop to the first applicant on 17 April 2015 indicating that the first applicant bought the fridge to the value of R43 500.00 as well as a tax invoice issued to the second applicant by Lynen Laundry on 21 January 2023 indicating that an 8 kg speed queen dryer LLDE3TRG was sold to the second applicant for an amount of R14 000.00. With regard to the rest of the assets, it was submitted that the fourth respondent has since vacated the house after the divorce and the assets in the house does not belong to him but the applicants. The applicants' rights are therefore created by ownership of the assets. I therefore find that the applicants have succeeded in demonstrating the existence of a clear right.

[18] The second requirement is that of an injury actually committed or reasonably apprehended. In the case of ***Pilane v Pilane***[5] injury is described as the violation of the right. The test in regard to the second requirement is objective and the question is whether a reasonable man, confronted by the facts, would apprehend the probability of harm. In the case of ***Minister of Law and Order v Nordien***[6]the held that:

"A reasonable apprehension of injury has been held to be one which a reasonable man might entertain on being faced with certain facts. The applicant for an interdict is not required to establish that, on a balance of probabilities flowing from the undisputed facts, injury will follow: he has only to show that it is reasonable to apprehend that injury will result. However the test for apprehension is an objective one, this means that, on the basis of the facts presented to him,

[5] 2013 (4) BCLR 431 CC at para 50
[6] 1987 (2) SA 894 (A) at 896

the judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant."

[19] It is common cause that the sale is scheduled to proceed on 31 August 2023. Applying the test to the facts of the case, it is therefore clear that if the court does not come to the assistance of the applicants, the assets will be sold and the rights of the applicant will be violated. The last requirement is that the applicant must have no adequate alternative remedy. The applicants submitted that they do not have an adequate alternative remedy whilst on the other hand the first respondent submitted that the first respondent has a course open to her in that she can still claim from the respondent if her assets are sold by the sheriff as they were married in community of property.

[20] In the case of ***Hotz and others v University of Cape Town***[7] the court held that the existence of another remedy will only preclude the grant of an interdict where the proposed alternative will afford the injured party a remedy that gives it similar protection to an interdict against the injury that is occurring or is apprehended. Applying this to the facts, it is clear that if the sale goes ahead and the first applicant claim from the fourth respondent as suggested by the first respondent, the first applicant will not be afforded the same remedy because the fourth respondent appears to have no means to pay the first applicant, hence the first respondent is attaching the assets to satisfy the fourth respondent's debt. In addition, the court further stated that, the fact that one of the parties or even the judge, may think that the problem would be better resolved, or can ultimately only be resolved, by extra crucial means, is not a justification for refusing to grant an interdict. I therefore find that the applicants have no adequate alternative remedy thus have succeeded in demonstrating the three requirements for a final interdict.

[21] In the result the following order is made:

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[7] 2017 (4) ALL SA 723 (SCA) at para 36

21.1. The second respondent is interdicted from proceeding with the sale in execution of the Hyundai H1 with registration number and letters DVF […], Brown leather sofa with glass table, LG Plasma TV, Speed Queen Automatic Dryer Control, Trojon Ignite350 Microwave, Brown sofa with coffee table and a Samsung four door fridge.

21.2. The second respondent is directed to immediately release the above mentioned assets from attachment and give possession thereof to the applicants respectively, free from payment of any fees.

21.3. The First Respondent shall pay the costs of this application on an attorney and client scale.

M KGATLA
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on :	**29 August 2023**
Judgment delivered on:	**31 August 2023**
For the Applicant:	**Maloka Sebola Attorneys**
For the Respondents:	**Majang Incorporated**