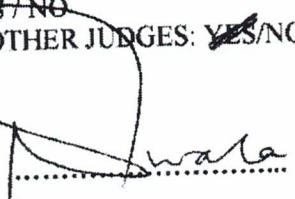


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 39782/2019

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
<u>10/07/20</u>	
Date	ML TWALA

In the matter between:

**SHEPHERD BUSHIRI INVESTMENT (PTY) LTD**  
**APPLICANT**

**FIRST**

**BUSHIRI SHEPHERD HUXLEY**

**SECOND APPLICANT**

**BUSHIRI MARY**  
**APPLICANT**

**THDIRD**

**AND**

**JM BUSHA INVESTMENT GROUP (PROPRIETARY)**

LIMITED

RESPONDENT

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**JUDGMENT**

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**Delivered:** This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 13<sup>th</sup> July 2020.

**TWALA J**

- [1] Before this Court is an application brought on urgent basis wherein the applicants sought an order to stay the writ of execution issued under the above case number and interdicting the respondent from taking any steps in execution of the judgment entered against it (the applicants) in favour of the respondent on the 23<sup>rd</sup> of March 2020 and other ancillary relief.
- [2] The genesis of this case arises from an order consented to by the parties and granted by this Court on the 23<sup>rd</sup> of March 2020. The applicants have firstly appealed the order but later withdrew the appeal and filed an application for the rescission of the judgment and order. Realising that the respondent has previously proceeded with the execution of the judgment entered against it whilst the appeal process was in progress, the applicants brought this application to interdict the execution of the writ and any further execution of the judgment pending the finalisation of the application for the rescission of judgment which has already been issued and served on the respondent who is still to answer thereto. Furthermore, since the application for the rescission of judgment does not suspend the execution of the order, the applicants deem

it necessary to bring this urgent application to interdict the respondent pending the finalisation of the application for rescission process.

- [3] Counsel for the applicants, Advocate Campbell, submitted that during the course of the application for leave to appeal, the respondent attached the shares and properties owned by the applicants and now the applicants are desirous to prevent the respondent from selling same since there is an application for reason of the judgment and order of the 23<sup>rd</sup> March 2020. It was contended further that the applicants have a clear right in that its erstwhile legal representatives acted without or outside its mandate when it agreed and consented to the order. If the respondent were to proceed with the writ of execution and sell the shares and properties of the applicants, the applicants will suffer irreparable harm as it would not be easy to recover those shares and properties from the third parties. Furthermore, it was argued, the applicants have a bona defence to the amount and interest mentioned in the judgment since the calculation of the interest is based on a wrong rate – hence the balance owing to the respondent is not as it appears on the order. Therefore, so it was submitted, there are good prospects of success in the application for the rescission of the judgment and order.
- [4] It was contended by Advocate Botha for the respondent that the applicants failed to establish that they have a prima facie right which needs to be protected from the eminent harm which is the execution of the writ issued against their property. The applicants employed the services of legal representatives who, on their instructions to negotiate and buy some time for the payment of the debt, did negotiate and settled the matter and consented to the order of the 23<sup>rd</sup> March 2020. There is no merit in the applicants' challenge on the authority and mandate of their erstwhile legal representatives. The balance of convenience favours the respondent who has not received payment

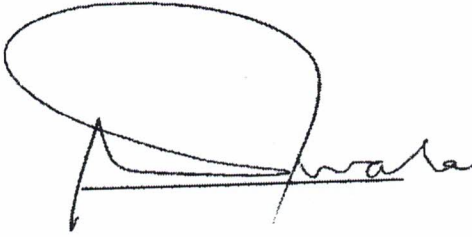
of its capital of R200m and interest since November 2019 and the prejudice to be suffered by the blue collar workers whose pension fund contributions constitute the whole capital of loan of R200m. Furthermore, so the argument went, the applicants have failed to establish the facts to show cause why the Court should suspend the judgment and order of the 23<sup>rd</sup> of March 2020.

- [5] It is a trite principle of our law that a party who seeks an interim interdict against another should demonstrate to the Court that it has a prima facie right, a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted and that there is no satisfactory remedy available. It is furthermore trite that the Court has a wide discretion in granting or refusing an interdict in an application for an interim interdict
- [6] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others; Case No: 33767/2011* this Court stated the following:
- “A discretion requires the exercise of a value judgment and there may well be a legitimate difference of opinion as to the appropriate conclusion. If an applicant has satisfied the requirements of the granting of an interim interdict there is no room for a court to exercise a value judgment. In other words a court has no discretion but to grant the relief sought.”*
- [7] Rule 45A of the Uniform Rules of Court provides as follows:
- “Suspension of order by the court*
- The court may suspend the execution of any order for such period as it may deem fit.”*

- [8] The question that needs to be answered in this case is whether the applicants have met the requirements of an interim interdict as laid down in a plethora of cases by the Courts. It is my respectful view that the applicants have failed to meet the requirements for an interim interdict. The applicants are challenging the authority and mandate of their attorney for settling the matter and consenting to the order of the 23<sup>rd</sup> of March 2020. In my view, for the purposes of the interim interdict, the applicants have an alternative and satisfactory remedy should the respondent execute the judgment and order of the 23<sup>rd</sup> March 2020. The alternative and satisfactory remedy available to the applicants in this case is to have recourse against its erstwhile legal representatives for acting outside the scope of its mandate or ultra vires. The issue whether the applicants have a prima facie case in the application for the rescission of judgment or the prospects of success of that application is irrelevant for the purposes of this application for an interim interdict.
- [9] I am unable to disagree with counsel for the respondent that the applicants' concern is that it will be almost impossible for them to recover their property once sold to third parties. However, the applicants have an alternative and satisfactory remedy of suing their erstwhile legal representatives for acting without a mandate. The applicants have, in my respectful view, failed to meet the requirements of an interim interdict and the application falls to be dismissed on this ground.
- [10] Furthermore, it is my considered view that the applicants have failed to establish facts to enable the Court to exercise its discretion to suspend the execution of the order of the 23<sup>rd</sup> March 2020. The ineluctable conclusion is that there is no merit in this application and it therefore falls to be dismissed.

[11] In the circumstances, I make the following order:

The application for an interim interdict is dismissed with costs.



**TWALA M L**

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION**

**Date of hearing:** 7<sup>th</sup> of July 2020

**Date of Judgment:** 10<sup>th</sup> of July 2020

**For the Applicants:** Adv. AG Campbell

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