

SOUTH AFRICA / JUDGMENT

City of Ekurhuleni Metropolitan Municipality v Themba and Others (26039/2020) [2022] ZAGPJHC 811 (17 October 2022)

[2022] ZAGPJHC 811

COURT

South Gauteng High Court, Johannesburg

BEFORE

S Yacoob

CASE / FILE NUMBER

26039/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 26039/2020

REPORTABLE:

No

OF

INTEREST TO OTHER JUDGES: No

REVISED:

No

17/10/2022

In

the matter between:

CITY
OF EKURHULENI METROPOLITAN
Applicant
MUNICIPALITY
and
THEMBA,
TRUDY BETTY
First Respondent
LUKHELE,
ELIZABETH
Second Respondent
NKOSI,
MUSA
Third Respondent
REGISTRAR
OF DEEDS, JOHANNESBURG
Fourth Respondent
DIRECTOR-GENERAL,
DEPARTMENT OF HUMAN
SETTLEMENT
GAUTENG PROVINCE
Fifth Respondent
MEMBER
OF THE EXECUTIVE COMMITTEE FOR HUMAN
SETTLEMENT
GAUTENG PROVINCE
Sixth Respondent

JUDGMENT

YACOOB J:

1. The applicant (“The Municipality”) was and is the owner of property leased or beneficially occupied by people who ordinarily at the time of occupation were not able in law to acquire ownership. The Conversion of Certain Rights into Leasehold or Ownership Act, 81 of 1988 allows the rights of these people to be converted into formal rights of either leasehold or ownership.
2. Mr Nsibande, the deceased father of the second respondent (Ms Lukhele) was a person with the right to occupy the property at Stand [...], O [...] Street, Etwatwa, Extension [...], Benoni, owned by the Municipality. The family has resided on the property for a length of time which is not identified.
3. The property has been registered into the name of the first respondent (Ms Themba). The third respondent (Ms Nkosi) is Ms Lukhele’s daughter. Both Ms Themba and Ms Nkosi reside on the property. Ms Nkosi’s children and grandchildren live with her. Ms Lukhele resides nearby.

4. According to the Municipality, it never agreed to the transfer of the property to Ms Themba. The transfer came to its attention when it was served with an eviction application Ms Themba brought against Ms Nkosi. It then discovered that the property, which according to its records it owns, had been transferred to Ms Themba.
5. Ms Themba contends that she purchased the property from Ms Lukhele in 2014 for the amount of R50 000. There is no evidence that the payment was fully made. The title deed, on the other hand, suggests that Ms Themba bought the property from the Municipality for R4 500.
6. Ms Lukhele and Ms Nkosi do not participate in these proceedings.
7. It is common cause that the property was never transferred to Ms Lukhele, and in fact she never became the owner. The Municipality seeks the setting aside of the transfer to Ms Themba on the basis that it was unlawful, to allow it to carry out an inquiry in terms of section 2 of the Conversion Act, to determine what the proper outcome ought to be.
8. According to Ms Themba the reason she brought an eviction application against Ms Nkosi was that Ms Nkosi had complained to the police about her. However, at present they are both living on the property and no attempt is being made to evict either party.
9. Ms Themba does not dispute the unlawfulness of the transfer. What she does is submit that, in essence, setting aside the transfer is not just and equitable. She requests that some other solution be found. She asks that the Municipality perhaps find some other property for Ms Nkosi. She is destitute and is as entitled to service delivery and protection from the Municipality as Ms Nkosi is. She accuses the Municipality of taking sides with Ms Nkosi against her.
10. The Municipality submits that it is not taking sides. It wants to ensure that whatever happens with the property is lawful as well as just and equitable. It is not entitled to undertake an inquiry in terms of the Conversion Act unless it is the owner of the property and any steps it takes will be regularized only if it is also the registered owner. If the inquiry shows that Ms Themba in fact paid R50 000 for the rights to the property, then the result may well be that the Municipality transfers the property to Ms Themba. However, the proper way for this to happen is through an inquiry.
11. It is trite that a person cannot transfer rights they do not possess. Ms Lukhele was never the owner of the property and therefore could not transfer ownership to Ms Themba. It is not clear how the property came to be transferred to Ms Themba. She does not proffer any explanation. The Municipality contends that all this will emerge in the section 2 inquiry. Counsel for the Municipality assures me that nobody will be evicted or dispossessed until the inquiry has determined what has happened and what the most equitable outcome is.
12. In these circumstances it is appropriate for the transfer to be set aside and the inquiry to determine the proper state of affairs.

13. Although the first respondent opposed the application, her attorney acted pro bono. It is not appropriate to grant a costs order against her.
14. I make the following order:
 - (a) The transfer of the property known as Stand [...], O [...] Street, Etwatwa, Extension [...], Benoni, Registration Division I.R in the Province of Gauteng, measuring 220 square metres as it fully appears from General Plan SG NO.[...] with registered Title No.T [...]into the First Respondent's name is declared unlawful, null and void.
 - (b) The Fourth Respondent is to register the property into the name of the Applicant within 30(thirty) days of the service of the order on its offices.
 - (c) The Fifth Respondent is to hold an enquiry over the property in terms of Section 2 of the Conversion Act, specifically taking into account the circumstances in which the property was transferred to the First Respondent, as well as all other relevant circumstances.

S. YACOOB

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant: JMV Malema

Instructed by:

Padi Incorporated

First Respondent's Attorney: WS Khalishwayo, of Wiseman S. Khalishwayo

Attorneys

Date of hearing:

13 April 2022

Date of judgment:

17 October 2022

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