

SOUTH AFRICA / JUDGMENT

Delport v Gugushe and Others (15733/2020) [2021] ZAGPPHC 486 (5 August 2021) [2021] ZAGPPHC 486

COURT

North Gauteng High Court, Pretoria

BEFORE

N Davis

CASE / FILE NUMBER

15733/2020

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HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

- (1) REPORTABLE: NO.
- (2) OF INTEREST TO OTHER JUDGES: NO.
- (3) REVISED.

DATE: 5 AUGUST 2021

CASE NO: 15733/2020

In the matter between:

MARCEL DANIEL DELPORT

Applicant

and

MZIMKHULU OSCAR GUGUSHE

First Respondent

ROUNDY PRUDENCE GUGUSHE

Second Respondent

ALL OTHER ILLEGAL OCCUPIERS Third Respondent

TSHWANE LOCAL MUNICIPALITY Fourth Respondent

J U D G M E N T

This matter has been heard virtually and otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

[1]

Introduction

1.1 The applicant styles himself as an “adult male businessman” and, although the application is one for an eviction order, he claims a domicilium address as that of his attorneys of record.

1.2 The first respondent is a retired SANDF officer, now also a businessman and he is married to the second respondent. I shall refer to them as “the Respondents”.

1.3 The third respondent is “all other illegal occupiers” and the fourth respondent is the local municipality.

[2] The applicant’s case

2.1 The applicant’s case is a simple one. He is since middle 2019 the registered owner of a residential immovable property in Valhalla, Pretoria and the first and second respondents are in occupation of this property.

2.2 These facts are not in dispute. It is also not in dispute that the respondent were the previous registered owners of the property and have been residing there since 2017.

2.3 In addition to confirmation of registration of the property in the name of the applicant by way of a deeds search printout, the applicant relies on a Deed of Sale indicating a purchase of the property by the applicant from the respondents dated 2 April 2019 for a purchase price of R 850 000,00.

[3] The respondent’s case

3.1 The respondents purchased the property cash for R 1 490 000,00 in 2017. It was thereafter registered in their names.

3.2 About September 2018, the first Respondent needed start-up financing for a business venture. The applicant, as “owner” of Best Bridging 777 (Pty) Ltd, agreed to provide the first respondent with a R500 000,00 revolving loan.

3.3 The respondents were provided with a blank discounting agreement which they signed at the offices of the applicant’s attorneys, a Ms Corina Jacoba Smith. The first respondent was unhappy with certain of the clauses in the agreement, which was deleted with the acquiescence of the attorney. The respondents were also required to hand over their deed to the property “as collateral”.

3.4 The loan was taken up by the first respondent whereafter he paid monthly instalments.

3.5 Upon being advised that the interest charged by the applicant is too high, the first respondent obtained alternate finance in April 2019.

3.6 The applicant however, refused to accept a settlement of the loan and told the respondents that they had to sell their property. The applicant gave them until June 2019 to do so. It was only by about October 2019 that the respondents managed to sell their property. They produced a sale agreement indicating a sale to a Mrs Kgapola for R 1485 000,00. It was to their shock that they then found out that their property was registered in the name of the applicant.

3.7 In January 2020 the respondents received the first eviction notice from the applicant's attorneys.

[4] Evaluation

4.1 The respondents dispute the authenticity of their signatures on the deed of sale relied on by the applicant. They even opened a fraud case at the local police station in this regard.

4.2 The respondents dispute the registration of the property in the name of the applicant as they say this was fraudulently obtained by way of an invalid document. They further say that they never sold their property to the applicant and certainly not for R850 000,00 which they in any event never received.

4.3 In reply, the respondents' denial of their signatures is disputed, not only by the applicant, but also by the attorney, who said they signed the document in front of her.

4.4 In further confirmation of the sale and transfer of the property by the respondents to the applicant, the attorney relies on a series of e-mails whereby the respondents' tax registration details were requested and eventually furnished.

4.5 The applicant, in reply, denies any relevance of the agreement with Best Bridging 777 (Pty) Ltd and avoids dealing with this issue or the absence of payment of any purchase price. Instead, he remains resolutely reliant on the registration of the property as a sufficient cause of action.

4.6 Apart from the fact of the registration of the property and that there is no counterclaim for the setting aside of that registration, there are irreconcilable factual disputes as to the alleged preceeding sale of the property as causa for the registration. See also in this regard *Knysna Hotel CC v Coetzee* NO [1997] ZASCA 114; 1998 (2) SA 743 (SCA) and *Nedbank Ltd v Mendelow and Another* NNO 2013 (6) SA 130 (SCA). There are also factual disputes as to the validity of the signatures of the respondents and what exactly had transpired in the attorneys' offices. What the respondents may have signed, may or may not have been a discounting agreement and their signatures may or may not have been appended to the sale agreement or may have been forged.

4.7 Is this a case where the respondents' version should be discarded as contemplated in *Room Hire Co (Pty) Ltd v Jeppe Street Mansions* 1949 (3) SA 1155 (T) and that a "robust approach" should be adopted as outlined in *Soffiantini v Mould* 1956 (4) SA 150 (E) at 154 E – H? I think not. To do so, would result in the determination of a set of facts on a balance of probabilities which may very well be disturbed by the hearing of oral evidence as discussed in *Trust Bank van Afrika Bpk v Western Bank Bpk en Andere* NNO 1978 (4) SA 281 (A) at 293H – 294 E.

4.8 What I find fortifying my conclusion, is that, despite the applicant's studious avoidance of any discussion of *Best Bridging 777 (Pty) Ltd* in his affidavits and his labelling of the topic as "irrelevant", the e-mails relied on by the attorney, all have *Best Bridging 777 (Pty) Ltd* as either the topic or subject thereof.

4.9 I am similarly of the view that to simply apply the *Plascon Evans*-test and refuse the application by virtue of the factual disputes, would not solve the disputes between the parties.

4.10 From the divergent version outlined above, a referral to oral evidence on a narrow issue might also result in a disservice being done to either party. A fuller exploration of the facts, beyond a mere eviction issue, encompassing the validity and/or existence of various agreements and all the allegations of fraud can only be canvassed by way of a trial.

[5] Order

5.1 The application is referred to trial.

5.2 The notice of motion shall be deemed to constitute a simple summons and the notice of opposition shall be deemed to constitute a notice to defend.

5.3 The applicant shall deliver his declaration within 20 (twenty) days after date of this order where after the rules applicable to pleadings and discovery as for trials, shall apply.

5.4 Costs shall be costs in the cause.

N DAVIS

Judge of the High Court

Gauteng Division, Pretoria

Date of Hearing: 28 July 2021

Judgment

delivered: 5 August 2021

APPEARANCES:

For the Applicant:

Adv. A. S L van Wyk

Attorney for Applicant:

Hendrik Haasbroek Attorney, Pretoria

For the 1st & 2nd Respondents: Adv. M. J Kleyn

Attorney for 1st & 2nd Respondents: Brian Plaatjies Attorneys, Pretoria

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Prepared on 10 October 2026 · Esheria