

SOUTH AFRICA / JUDGMENT

Legoale and Others v Legoale and Others (14206/03) [2005] ZAGPHC 49 (29 April 2005)

[2005] ZAGPHC 49

COURT

High Courts - Gauteng

BEFORE

JCW van Rooyen

CASE / FILE NUMBER

14206/03

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Will – in conflict with registered ownership of one of the children of the deceased - registered ownership shown by expert testimony not to have been based on a forgery of the deceased's signature. Van Rooyen AJ[1] This is a dispute between members of the same family about the ownership of a house in Atteridgeville, Tshwane, (formally known as Erf 2495). The dispute has its roots in Apartheid South Africa, where ownership of land was strictly regulated to exclude ownership by Black people, inter alia, in so-called locations, also known as townships. Atteridgeville was such a township.[2] Mrs Roseline Elizabeth Legoale was born in March 1912. She was granted a site permit to Erf 2495 in July 1964. She signed the permit above the words "Signature or left thumb print of person to whom certificate is granted". She had developed the property by way of the profits made from the making of clothes. On the 8th October 1985 she made a will in which she bequeathed her entire estate to her daughter Esther Legoale, a medical doctor. She was also appointed as executrix. It was common cause that Esther Legoale ("Dr Mammule") is the First Respondent.[3] Since Mrs Roseline Legoale was concerned that as a pensioner and widow she might lose her IN THE HIGH COURT OF SOUTH AFRICA (TRANSVAAL PROVINCIAL DIVISION) DATE: 29/04/2005 REPORTABLE In the matter between: BOTILENG LEGOALE & EIGHT OTHERS

APPLICANTS and MAMMULE ESTHER LEGOALE

FIRST RESPONDENT PRETORIA REGISTRAR OF DEEDS

SECOND RESPONDENT CO-OCCUPIERS OF ERF 2495 ATTERIDGEVILLE

THIRD RESPONDENT 010009000003bb00000006001c0000000000400000003010800050000000b020000000050000000c023300b00d040000002e0118001c000000fb021000070000000000bc02000000000102022253797374656d0000b00d0000bd3e00006454110070838239b8e421000c020000040000002d0100000400000020101001c000000fb029cff0000000000009001000000000440001254696d6573204e657720526f6d6

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200ac0dfffffffffff08000000fa0200000000000000000000040000002d01040007000000fc020000fffff0000
00040000002d010500040000002701ffff040000002d010000030000000000site permit, a family meeting
was held and it was decided that the property be transferred to DrMammule. On 1 September
1987 one of the daughters of Mrs Roseline Legoale, Mrs MonicaLetsholo, confirmed by way of
affidavit that her mother wished to transfer the site permit to DrMammule. This handwritten
statement bears the stamp of the Town Council of Atteridgeville andis dated 1 September 1987. It
was signed by the said daughter and attested to by two witnesses.Mrs Letsholo now states in an
affidavit that she was manipulated by Dr Mammule to sign thedocument and promised that the
transfer would not take effect before their mother signed thedocument as well. A further
handwritten document states that Mrs Roseline Legoale transfers thesite permit to Dr Mammule.
Mrs Roseline Legoale signed and it was also sworn to by her.[4] When the new democratic
dispensation was in the air after Nelson Mandela had beenreleased from prison in February 1990,
ownership for Black individuals became a reality. Intermsof the Upgrading of Land Tenure
Rights Act 1991, Act no 112 of 1991, the City Council ofAtteridgeville transferred the ownership of
Erf 2495, measuring 300 square meters, to Dr Mammule on the 23rdDecember 1992. This transfer
was effected by the Registrar of Deeds.[5] On the17thof August 2000, Mrs Roseline Legoale again
made a will at the age of 87 years.She bequeathed her estate equally to the nine applicants in this
matter as well as Dr Mammule . She signed the will, but it was only attested to by one witness.
The following names werementioned: Elizabeth Peto, Monica Letsholo, Magdeline Malomane,
Rebecca Mabele, JohnLegoale, Dorcas Maninja, Esther Legoale, Dorcas Maninja, Grace Legoale,
BotilengLegoale(grandson) and Naomi Lekwane. Five of Dr Mammule's six sisters and her only
brotherare amongst the applicants in this matter.[5] On the 22ndMay 2002 Mrs Roseline Legoale
passed away. She was aged ninety. DrMammule was appointed as her executrix by the Master of
the High Court.[6] When the 17thAugust 2000 will and testament of Mrs Rosaline Legoale was
read it appearedIto be in conflict with the ownership of Dr Mammule's ownership of the house on
Erf 2495. Thehouse was explicitly included in the will and was also, as were her other assets, to go
to the said10 Legoale children. With prudence and wisdom she provided that "no one amongst
them mustclaim entitlement on my properties. My properties must belong to all of them". She
also addedthat "should any of the above mentioned names become unhappy and against my last
will, theremaining names should gather and buy her/him out of the property."[7] The notice of
motion requests this Court to restrain Dr Mammule from transferring the propertyand to issue a
declaratory order that the applicants and Dr Mammule are co-owners of theproperty with the
concomitant order to register the property in the names of the applicants and DrMammule
Esther Legoale.[8] During argument before me the main issue was whether the signature of Mrs
RoselineLegoale had not been forged, inter alia, in the September1987certificate which
confirmed that the site permit would be transferred to Dr Mammule. I afforded the applicants the
opportunity toobtain the opinion of a handwriting expert. The opinion of Frederick Fourie was
handed up to meat the last hearing of this application. He is a qualified forensic handwriting
expert. Aftercomparing several of the signatures of the late Mrs Rosaline Legoale, he came to the

conclusion that "in taking all the corresponding writing characteristics into account and in the absence of fundamental differences I could come to no other conclusion as that the signatures signed RandRE Legoale were most probably written by the same person." I could find no reason to doubt the expert opinion and adv Kruger, for the Applicants, conceded the authenticity of the handwriting.[9] All that is left is the vague suspicion that Mrs Legoale did not fully understand the legal/intricacies of her signing over the site permit to Dr Mammule. Yet, judged by the answering affidavit of Dr Mammule, whose affidavit should win the day when there is difference between the founding affidavit and the answering affidavit unless it is far-fetched or clearly untenable,¹ there was a good and reasonable explanation for the fact that the deceased had transferred the site permit to her. Legislation then settled the matter when the site permit holders' rights were upgraded to ownership, There is no way in which the will of 2000, even if it be accepted as valid, could alter that unless fraud could be proved. As indicated above, the expert confirmed that it was Mrs Rosaline Mogale who had signed the documents. Mrs Letsholo stated in her affidavit that she was told by Dr Mammule that the document would not become effective before Mrs Rosaline Mogale had signed the document. Expert opinion now confirms that she did in fact do so. *I Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623(A) at 635A-B. Whether she understood what she was signing away is, in the absence of other cogent evidence, impossible to determine now that she has passed away. Her last will might be regarded as such evidence, but it is simply not sufficient to gainsay the verified signed document of 1987. The prima facie evidence of ownership in the Deeds Registry must therefore be confirmed as valid.[10] The application which, in essence amounted to an application that the Court declare Dr Mammule to be a co-owner, is dismissed.[11] In so far as costs are concerned, I believe that the present application was a matter of common interest between the applicants and the first respondent and that it served such interest to clarify the legal position. I accordingly make no order as to costs. I might mention that this costs order would also seem to accord with the last expression of intent of Mrs Rosaline Legoale in her will : share and share alike.[12] In so far as the application for eviction of the first applicant from Erf 2495 is concerned, the application is acceded to. It follows from the above reasons that he must vacate the premises which belong to Dr Mammule. He must vacate the property within a reasonable time: in this case I hold such time to be 31 May 2005. He knew about the possibility that the Court might dismiss the application in which he was the first applicant and it would not be reasonable to expect Dr Mammule to wait longer than 31 May 2005 to take possession of her property. The Sheriff is authorized and ordered to execute the eviction order so granted at any time following the date mentioned in the event of the first applicant not vacating the property on or before the said date. Once again no costs order is made. JCW van Rooyen Acting Judge of the High Court/For the Respondent: adv GLM Bokaba For the Applicant: adv J Kruger

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[7] The notice of motion requests this Court to restrain Dr Mammule from transferring the property

and to issue a declaratory order that the applicants and Dr Mammule are co-owners of the property with the concomitant order to register the property in the names of the applicants and Dr

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JCW van Rooyen Acting Judge of the High Court

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