

SOUTH AFRICA / JUDGMENT

Makhubo and Another v Maluleke and Others (22297/2011) [2012] ZAGPJHC 206 (10 October 2012) [2012] ZAGPJHC 206

COURT

South Gauteng High Court, Johannesburg

BEFORE

N F Kgomo

CASE / FILE NUMBER

22297/2011

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SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 22297/2011

DATE:10/10/2012

In the matter between:

LINDIWE NYANDENI MAKHUBO.....First Applicant

KENNETH MAHLOKOHLA..... Second Applicant

and

GIFT MALULEKE.....First Respondent

THE STANDARD BANK OF SA LTD.....Second Respondent

DIRECTOR-GENERAL : GAUTENG PROVINCE NO.....Third Respondent

REGISTRAR OF DEEDS, JOHANNESBURG.....Fourth Respondent

SARAH PHETHELAPHI SHIPALANE.....Fifth Respondent

J U D G M E N T

KGOMO, J:

INTRODUCTION

[1] The first and second applicants approached this Court for an order:

Setting aside the transfer of immovable property known as or situated at 1428 Key Drive, Jabulani in Soweto from the Province of Gauteng to one Sipho Motha, including all other or subsequent transfers and to allow the applicants to purchase the immovable

property from the Gauteng Province ;

Ordering the respondents to pay the costs of the application in the event they oppose same; and

For further and/or alternative relief.

[2] Only the second respondent is opposing the application.

THE PARTIES

[3] The first applicant is an adult female presently employed by the South African Defence Force and presently also resident at 1428 Key Drive, Jabulani, Soweto, which is to be henceforth referred to as “the property”.

[4] The second applicant, an adult male person, also resides in the property.

[5] The two applicants’ relevance to or in the application and their relationship to whoever was the original beneficiary or occupier of the property will be set out in the background information hereunder.

[6] The first respondent, Gift Maluleke (“Gift”) is an adult male attorney-at-law, ordinarily residing at 3760 Mbokota Street, Chiawelo, Soweto. He is the person in whose names the property is registered at the Deeds Office, Johannesburg, which registration took place on 18 May 2009.

[7] The second respondent, The Standard Bank of South Africa Limited (“Standard Bank”) is a bank and company with limited liability registered and incorporated in terms of the banking and company laws of South Africa having its registered offices at 9th Floor, Standard Bank Centre, 5 Simmonds Street, Johannesburg.

[8] The third respondent, the Director-General of the Province of Gauteng, who is cited in his/her official or nominal capacity is the ultimate administrative head of the Gauteng Provincial Department and his/her official offices are located at c/o The Premier Gauteng, 7th Floor, East Wing, 30 Simmonds Street, Johannesburg.

[9] The fourth respondent is the Registrar of Deeds, Johannesburg, cited in its official capacity, with offices situate at 26th Floor, Marble Towers, Cnr Jeppe and Von Weilligh Streets, Johannesburg. Fourth respondent, just like the third respondent, is

cited herein only for whatever interest he/she may have in the relief sought by the applicants.

- [10] The fifth respondent, Sarah Phethelaphi Shipalane, is an adult female person ordinarily resident at 275 Tladi Street, Tladi, Soweto. She is the widow and executrix of the deceased estate of one Sipho Michael Motha, who is the central figure in this application.

BACKGROUND AND HISTORY OF OCCUPANCY OF THE PROPERTY

- [11] During or about 1958, Harriet and Benjamin Dlamini were granted occupation and use of the property and became holders of land rights in respect thereof. In terms of Regulation 8 of Chapter 2 of the Regulations Governing the Control and Supervision of “Urban Bantu Residential Areas and Related Matters” (“the Urban Residential Regulations”) a certificate confirming the above was issued to Harriet Dlamini (“Harriet”) on 22 September 1980, which document was a re-issue of earlier certificates previously issued each time a holder of rights passed away. The last certificate issued prior to the one above was issued on 16 June 1971.
- [12] The certificate gave right of occupation and use of the property to the permit holder, Harriet, and her dependants.
- [13] The first applicant is the grandchild of Benjamin and Harriet. Benjamin passed away in 1970, hence a new certificate depicting

Harriet as the holder was issued on 16 June 1971. Kenneth Mahlokohla, the second applicant is Harriet’s son and the first

applicant’s uncle. Both have been staying in or occupying the property since their births to date – Kenneth since 1964 to date. Other children of Harriet were Cynthia, Patrick and Constance. The latter was first applicant’s mother.

- [14] After the death of Benjamin Dlamini, his wife Harriet started over-indulging in the use of intoxicating drinks and also became

mentally unstable. As a result, she was admitted to the Sterkfontein Mental Hospital on numerous occasions, which intervention did not make her reduce her misuse of alcohol.

- [15] Sipho Michael Motha (“Motha”) was an employee of the Soweto City Council as a town clerk during the times material to the happening of deeds that precipitated this application. The said Motha was registered to and staying at No. 275 Tladi, Soweto until he passed away on 24 April 2003. He obtained possession and occupation of the above property by way of a deed of cession signed by the previous occupier, one Isabella Mathabathe on 19 October 1984 where a fee of R4 000,00 exchanged hands.
- [16] Unbeknown to his own wife and executrix of his deceased estate, Sarah Shipalane, the fifth respondent (“Shipalane”), Motha had contrived to have a string of properties in Soweto registered in his names, among others, erven 1428 Jabulani, 1254 Jabulani, 3068 Mapetla Ext 1 in addition to his home, 275 Tladi Soweto. These other properties have other owners.

- [17] During or about 1983 Motha forcibly evicted Harriet, Constance, Cynthia, Kenneth and the first applicant from the property without any reason, more so that the property was still registered to Harriet at the time. Through advice from an attorney, the family returned to the property.
- [18] On or about 20 August 1997 a letter was issued by the Department of Housing and Land Affairs addressed to the occupier of the property to come and formalise the conversion of leasehold rights to the property into ownership at an enquiry to be held in terms of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act 81 of 1988), as amended. This letter was calling upon the occupiers, who were the applicants to attend that enquiry on 9 September 1997.
- [19] It is common cause that the above letter never reached the occupiers, i.e. the applicants before the date of the enquiry.
- [20] Somehow, in the interim, Motha, who had insider information over issues relating to leasehold and ownership of properties in Soweto contrived to obtain a finding by the authorities on 28 July 1998 that he was the rightful owner or had better title to the property despite the fact that he did not qualify in terms of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 and/or the Upgrading of Land Tenure Rights Act 1991 (Act 112 of 1991) as amended. He was never an occupier of this property.
- [21] Upon learning of the above state of affairs Constance, one of Harriet's children challenged that ruling on 30 July 1998. She was never informed of the outcome of that appeal by the authorities. Regular enquiries by her met a brick wall until she passed away on 20 October 2006. The first applicant continued with the enquiries and was put off for one or other reason until she learnt that the property had been sold to a third party while she and the other applicant and other members of the family were living in it as they still do.
- [22] The property exchanged several hands in a short space of time. A paper trail points to the property having been transferred to Motha by the Department on 24 February 1999 in terms of the Conversion of Rights to Leasehold or Ownership Act, 1988. As stated above, Motha had no right or entitlement to take transfer of this property, let alone under the above Act. He never lived in it and never tried to take transfer thereof. The transfer of this property into Motha's names was one of several of a similar kind made during the same period as stated above, by way of example, Erf 3068 Mapetla which was done on 23 February 2000; Erf 1254 Jabulani on 29 October 2007. The last-mentioned transfer was purportedly signed for by a person claiming to be Motha. Unfortunately, Motha was already deceased at that stage and could not have taken part in the transfer. Worse still the alleged Deed of Transfer was dated 7 December 2005; pre-dating the agreement which is supposed to authorise it.

- [23] The above pointed to fraudulent acts having accompanied the purported transfers of properties to Motha, which include the property in issue here.
- [24] After Motha's death on 24 April 2003 his customary wife, Sarah (the fifth respondent) was appointed executrix of his deceased estate and she listed the property in the estate inventory. Sarah attempted to evict the applicants from the property in August 2007. Her reason for doing the above according to her attorneys, Messrs Manzini Attorneys of Johannesburg, was that the property was registered in her (fifth respondent's) names at the Deeds Office. A deeds search subsequently proved that no such registration existed at the Deeds Office as on 24 June 2008. It was registered in the names of one Gift Maluleke who happened to have been an attorney-at-law at the time of registration. It is on record that the said Gift Maluleke has since been struck off the roll of attorneys. His partner at Manzini Attorneys, M T Manzini was also struck off the roll.
- [25] This Gift Maluleke had a mortgage bond with Standard Bank registered or passed over the property in the amount of R250 000,00.
- [26] In any event, documentation produced by Manzini Attorneys on 10 June 2009 purporting to prove a valid process of purchase and sale and transfer of the property from Motha's deceased estate have proven to be fraudulent. The executrix, the fifth respondent, never participated in such a deal and her signature on the papers were proven in the papers herein to have been forged.
- [27] The Agreement of Purchase relied upon, dated 30 June 2007 mentions a purchase price of R110 000,00, yet a bond of R250 000,00 was passed by Standard Bank. The fifth respondent, as the purported seller, never received a cent. Standard Bank does not explain who was paid the proceeds of this particular sale. Furthermore, the alleged purchaser, Gift Maluleke did not sign the agreement. Neither did he ever attempt to take occupation of the property. Although Sarah (fifth respondent) is alleged to have been the seller, nobody signed the alleged Agreement of Sale on behalf of the seller. Worse still, the names of the purchaser on the document were scratched out and Gift Maluleke's names inserted. This alteration is not initialled and/or signed, to authenticate it.
- [28] It is also common cause that Gift Maluleke defaulted on his bond repayments at Standard Bank and the latter has foreclosed.
- [29] Standard Bank was asked on behalf of the applicants on 29 November 2010 to explain under what circumstances they registered a mortgage bond over the property worth R35 000,00 but granted a loan of R250 000,00 which process was based on unsigned founding documents. The bank has not clarified this aspect satisfactorily.

[30] The applicants' call to action was prompted by a letter addressed by Standard Bank to Gift Maluleke dated 9 February 2011 as well as the sight of bank dispatched valuers valuating it during that same month. Queries were raised by the applicants through their attorneys with no response.

[31] A real possibility exists that Standard Bank may attach and sell the property in execution for defaults ascribable to Gift

Maluleke.

HAVE APPLICANTS MADE OUT A CASE

[32] It is clear from the papers filed herein that there was a full scale fraud or chicanery right from the beginning in as far as this property is concerned. It is also clear that a City Council employee, Motha, used his position or knowledge of persons and/or processes in the Housing Department(s) relating to Soweto to commit fraud which had the consequences of depriving lawful occupiers of property of their rights of occupation without them knowing. The paperwork used to effect transfer of the property in issue here from the Housing Department to Motha was fatally flawed. As stated above, the processes of transferring the property from Motha to Gift Maluleke of Manzini Attorneys were also fraught with inconsistencies, clear fraud and illegalities.

[33] One cannot dispute it if it could be suggested that there was wholesale collaboration and acting in cahoots by unholy partners-in-crime in the alienation of ownership or occupancy rights in respect of the property.

[34] Standard Bank's part in the whole saga also does not inspire any confidence. Their inability, failure and/or neglect to explain their processes in this respect do not help. Nevertheless, their (Standard Bank's) interest is in retrieving their money from Gift Maluleke, their client. They have already started that process. It is my considered view and finding that they should pursue their client and not the applicants herein.

[35] The bank (second respondent), submitted and contended that this application should fail among others because it would serve no purpose setting aside the whole sequence of transfers because the applicants attach no indication from the Johannesburg City Council about who it (City Council):

"... has in any event not seen fit to add as a party hereto that they are in any way interested or intend on disposing [sic] the property to her [sic] ..."

(Second respondent's answering affidavit, pp 91 of record.)

The bank further contends that until such indication is filed herein by the applicants, the latter do not have locus standi to bring this application.

- [36] The above submission is in my view untenable. I see no duty on the applicants to do that. Furthermore, the City Council was by-passed or misled by corrupt persons and/or employee which led to inexplicable and/or incompetent transfers.
- [37] The second respondent also casts aspersions or doubts over whether the applicants did actually manage to effect service of these proceedings/application on the first respondent merely because it failed to trace him. They further want a personal service to be effected on him.
- [38] I cannot help it but feel that the second respondent would like or would appreciate some assistance in laying its hands on the first respondent. However, it is my view and finding that it is going about it the wrong way by expecting the applicants to do their work for them after coming up with speculative assumptions regarding service on him. It is my further finding that this should not avail the second respondent.
- [39] From the documents filed by the applicants and motivation presented in argument in this Court through their counsel, I am satisfied that the processes purporting to be involving Harriet selling the property to Motha are not worth the paper they are written on. They have “fraud” written all over them. In any case, Harriet was not the owner of the property. The City Council or Housing Department was. Harried would thus not have had the right to sell it. Consequently, the second respondent’s submission that:

“Motha purchased the property from Harriet there is no indication other than the speculation by the Applicants that he had done so in any lawful way whatsoever ...”

(Second respondent’s answering affidavit on pp 92 of record.)

cannot hold water. It is my considered view that what the second respondent refers to as speculation have been shown by evidence from the documents available and the inherent probabilities to be anything else but speculation. Furthermore, contrary to the views propounded by the second respondent, it has been clearly shown that Motha did not have any standing or right to be entitled to the transfer of this property.

- [40] The second respondent further contends that these proceedings must be stopped and the applicants referred back to the City Council to find out how far the appeal they lodged in 2008 had progressed.
- [41] I do not see how the above course of action will assist in resolving issues raised herein finally. There is evidence that the first applicant did just that many times and hit a brick wall. I find that it is not a solution to the problems raised in this application.
- [42] An order also that the City Council report to this Court what the results of that appeal are as requested by second respondent as an alternative to the above also does not address the issues raised herein.

[43] The amounts of mortgage money given to Gift Maluleke are not issues that should influence a decision in this application. It is a matter between the bank and its client. However, the issues relating to incomplete documents without material signatures indeed have a bearing to the outcome of this application.

[44] On all the probabilities inherent in this case as well as the evidence available, the transfers effected in respect of the property need to be revisited.

[45] The applicants submitted and contended that there was a rule or habit or practice in township property ownership that females could not be owners of same. That rule is said to have been transmitted to Harriet in the presence of the first applicant as follows:

“After her husband died, Harriet was called by the superintendent working for the Provinces Department of Housing (Third Respondent) and told that there was a ruling that widows could not keep property, they had to get tenants or get married again.”

(Para 9 : replying affidavit at pp 107.)

[46] This was not contested or gainsaid. By any name, the above is quite a weird thing. However, strange things happened during the olden days in the housing matters relating to township residents.

[47] What is also very clear in this application is that the deponent of the second respondent's answering affidavit, Mr

Uys, the attorney, knows nothing about or has had no personal dealings with this matter until Gift Maluleke came to the Bank (Standard Bank) for finance. As such, the applicants have a point when they submit:

“10. Uys, the deponent for the second respondent, only became involved in the matter when it became a foreclosure, long after both Harriet and Motha died. He has no personal knowledge of his allegations in paragraph 8 and I request that it be struck out as hearsay.”

(Pp 107 of papers herein.)

[48] The paragraph 8 referred to above is the paragraph in the second respondent's answering affidavit wherein the latter was responding to the applicant's paragraph 19 (of founding affidavit) in which they contended that the aspect about Motha

purchasing the property herein from Harriet is not speculation because Harriet was an alcoholic who had a history of mental instability which aspects did not rule out she having sold the property when in such unstable state of mind.

[49] I do not see how a mentally unstable person would participate in a valid and legal transaction.

[50] It is revealing that Uys did not come up with any documentation relating to what happened prior to the foreclosure process which could gainsay the applicants' first hand information.

[51] It is important to reiterate that the third respondent had been served with this application but have chosen not to oppose it or file any papers that could have shed a different light on the applicants' contentions or submissions. On the contrary, the fourth respondent, the Registrar of Deeds, Johannesburg filed a helpful document setting out what can be done in this case. Consequently, it is my view and finding that the second respondent is not competent to speak on behalf of the third respondent.

See also: Standard Bank of SA v Han-Rit Boerdery & Others : Case 32371/2010 (GNP) (unreported).

CONCLUSION

[52] The facts and circumstances sketched out by the applicants as supplemented by whatever came out of the second respondent's affidavit in my view point to impropriety in the transfers and residency of Erf 1428 Jabulani Township. There was no causa for it to be transferred into the names of Motha in the first place. What occurred there amounts to improper or fraudulent activity.

[53] Motha and/or certain officials in the Housing Department or City Council of Soweto or Johannesburg committed wholesome fraud to conjure the transfer of the property in which the applicants reside into Motha's names. That transfer stands to be set aside.

[54] Motha's widow is purported to have sold this property to Gift Maluleke. She denies ever doing so or there is no evidence

pointing to that. What is apparent is that people with motives to defraud conjured to dupe or act in cahoots with others to have the transfers to Gift Maluleke validated or effected despite the fact that there was no signed Deed of Sale which ought to have prefaced such a transfer. How the Deeds Office, Johannesburg (fourth respondent) processed such transfers is not clear.

[55] In terms of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 as read with the Upgrading of Land Tenure Rights Act 112 of 1991 the occupants of tenements or houses were the ones whose tenures ought to have been looked into to give effect to the present law where people are given ownership of the homes they occupy or have lived in.

[56] In this case, the effect of the laws was circumvented by fraudulent activity which if allowed to remain in effect, would

amount to gross injustice to the applicants in this case. The situation should be normalised.

[57] Among others, the applicants sought an order in this application for further and/or alternative relief. In my view the above means that this Court may grant such relief as it deems fit and/or appropriate in the circumstances even though not specifically

prayed for.

[58] This is what this Court is going to grant.

- [59] It is my view and finding that to just refer the matter back to the City Council may be tantamount to authorising the start of another tortuous and circumlocutions process to determine who should be the registered owner of this property. However, the applicable law enjoins this Court to do just that.
- [60] It is so that the second respondent has attached the property in execution. To allow that attachment to stand would in my view be tantamount to authorising or allowing it to be sold in execution for the defaults of or by Gift Maluleke who had it transferred into his names through improper or illegal and unlawful methods or means. Unfortunately, it is the applicant's duty to ensure that that does not happen.
- [61] The indolence of Government Departments should not render execution of court orders absurd.
- [62] What the fourth respondent (Deeds Office, Johannesburg) has submitted that in terms of section 6 of the Deeds Registry Act, 1937 (Act 47 of 1937) as amended, makes provision for or dictates that this property be re-transferred into the names of Sipho Michael Motha ("Motha"). The fourth respondent further submitted that the appropriate order this Court must give or issue should be that:

"... the Registrar of Deeds must be instructed to cancel the Deed of Transfer T11950/1999 in terms of the above section (section 6) so

that the property revert to Gauteng Province [sic] Government."

- [63] The problem with the above submission is that it presupposes a valid transfer of the property to Motha. Unfortunately there was no such valid or legal or lawful transfer as stated above.
- [64] The applicants have been in and out of offices at the Gauteng Department of Housing or Town or City Council trying to have the discrepancies inherent in the transfers corrected but did not get any joy. Instead, officials of the Housing Department or City or Town Council went ahead and authorised the transfer and validate non-existent sales to third parties.
- [65] Section 6 of the Deeds Registries Act, 1937 reads as follows:
- "6. Registered deeds not to be cancelled except upon an order of court.*
- (1) Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificates of title or deed conferring or conveying title land, or any real right in land other than mortgage bond, and no cession of any registered bond as security, shall be cancelled by a registrar except upon an order of court.

Upon the cancellation of any deed conferring or conveying title to land or any real right to land other than a mortgage bond provided for in sub-section (1), the deed under which the land or such real right in land was held immediately prior to the registration of the Deed which is cancelled, shall be revived to the extent of such cancellation, and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.”

[66] The next issue that needs to be decided is whether or not the applicants have shown sufficient reason to escape the rule that requires proceedings of this nature to be brought within a reasonable time.

[67] In *Mnisi v Chauke and Others, Chauke v Provincial Secretary, Transvaal, and Others* 1994 (4) SA 715 (T) the applicant sought to eject the respondents from certain immovable property in Atteridgeville, Pretoria. A certificate of

occupation had been granted in respect of the property to the widow and sole heir of the deceased occupier of the property, who had purchased the right of occupation to the erf from the Town Council before his death. The Conversion of Certain Rights to Leasehold or Ownership Act 81 of 1988 had come into operation in January 1989 and in terms thereof the Provincial Secretary declared the widow to have been granted a right of leasehold as contemplated in section 2(4) of the Act. On 30 December 1992 the Registrar of Deeds signed a certificate of ownership which proclaimed the widow to be the owner of the property concerned in terms of section 13(1) of the Upgrading of Land Tenure Rights Act 112 of 1991. The widow sold and transferred ownership of the property to the applicant during 1993. On 18 August 1993 the respondents brought a counter-application seeking the setting aside of the Provincial Secretary's decision to grant leasehold to the deceased as well as the declaring as null and void the certificate of ownership granted to the widow in 1992 as well as the deed of transfer that occurred in 1993.

[68] It was contended on behalf of the Provincial Secretary that the counter-application, which was essentially a review, which attacked the decision taken more than two years earlier by the Provincial Secretary as well as the certificate of ownership that was taken several months earlier, ought to be dismissed by reason of the delay in bringing it.

[69] The respondents submitted in this respect that they were simply people who did not understand the intricacies of the granting of rights to immovable property or the rules relating to timeous prosecution of actions or applications.

[70] Goldstein J found that the respondents had not shown sufficient reason for the relaxation of the rule requiring a review to be brought within a reasonable time. He further held that even if they were unsophisticated people they must have been aware at the crucial time of the changes wrought by the 1988 and 1991 Acts. These Acts were widely workshopped in the townships as well as in the mass media. The counter-application was dismissed.

- [71] In our current application, the applicants have been consistently challenging what was happening from the times of Harriet and Constance without interruption. It is my finding that the continuousness of their enquiries and the timing of this court application are not so removed from each other by effluxion of time as to constitute a delay in bringing the application. As a result, this aspect does not vitiate the applicants' application.
- [72] In *Nzimande v Nzimande and Another* 2005 (1) SA 83 (W) Jajbhay J held among others that the holder of a certificate issued under the applicable laws and regulations, especially the Conversion of Rights into Leasehold or Ownership Act, was not automatically entitled to declaration of rights under the above Act and that the Director-General exercising a discretion in making a determination under the Act entitles him/her, retrospectively, to treat as invalid any certificate issued if there are reasons for that. Such an entitlement flows from the particulars and peculiar facts of the matter under consideration, applicable legislation, the interests of justice and good governance.
- [73] The Director-General in this application chose or elected not to enter the fray. In so doing, he/she have deprived this Court of the benefit of that office's contribution. When the history of this matter is anything to go by, a speedy or timeous resolution looks like a challenge. However, the law enjoins the Director-General of the relevant Department to hold an enquiry in circumstances such as these.
- [74] In *Mvulazana Georgina Kuzwayo v The Representative of the Executor in the Estate of the Late Mbongeni Jonas Masilela*, Case 28/2010, neutrally cited as *Kuzwayo v Estate Late Masilela* (28/10) [2010] ZASCA 167 (1 December 2010), the Supreme Court of Appeal held among others that a holder of a site permit and occupier of a site is entitled to apply for an order that the Registrar of Deeds cancel a deed of transfer issued or registered to a wrong person. Such occupier is also entitled to ask that the Director-General of Housing in the Province hold an enquiry in terms of section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 in order to determine to whom ownership should be granted.
- [75] The facts in the above case are similar to those that prevail in our application insofar as the salient points of dispute are concerned.
- [76] Lewis JA held at the end of the day that:

The Registrar of Deeds, Johannesburg be ordered to cancel the title deed in question and also cancel all the rights accorded to the first respondent in that case by virtue of the deed; and

The Director-General for the Department of Housing, Gauteng Province be directed to hold an inquiry in respect of the property

in issue, namely, Erf 2000 Vosloorus, in terms of section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988, and to declare that the holder of the site permit or occupier in respect of the erf is the owner thereof.

[77] The above order appears to be the type of order that is appropriate in this case. The Conversion Act requires an enquiry to be conducted by the Director-General pursuant to section 2 before a declaration is made that a site permit be converted to full

ownership. That should be done before transfer thereof is effected to an occupier found to be deserving of ownership thereof.

[78] In the above case, the High Court had straight away directed that the Gauteng Department directly transfer the property in issue to the estate without such an enquiry. From what I alluded to above, one would form an impression that that is what I intended doing in this application. I am however constrained by the applicable laws.

[79] It is so that the applicants are the most probably entitled to acquire ownership of the property. However, this inquiry is a prerequisite in terms of the applicable law(s).

[80] It is yet, still my view and finding that the previous vesting of rights, starting from Motha including all subsequent acts and transfers stand to be declared null and void ab initio and cancelled.

[81] The second respondent is understandably worried and concerned about its investment in Gift Maluleke who has since been eluding them, more so that this property was their security. Unfortunately, they will have to excuse Gift Maluleke one way or another first.

ORDER

[82] After perusing all the papers filed of record herein, listening to argument and considering the matter, the following order is made:

The transfer of the immovable property, namely, Erf 1428, Key Drive, Johannesburg, Soweto, from the Province of Gauteng to Sipho Michael Motha and/or all subsequent transfers is/are hereby set aside and declared null and void and/or cancelled;

The Registrar of Deeds, Johannesburg is ordered to cancel the title deed or Deed of Transfer T11950/1999 involving Sipho Michael Motha and revert ownership of the property to the Gauteng Provincial Government;

All other subsequent transfers of the above property are also declared null and void and cancelled;

The Director-General of or for the Department of Housing, Gauteng Province, is directed to hold an inquiry in respect of this

property, i.e. Erf 1428, Key Drive, Jabulani, in terms of section 2 of the Conversion of Certain Rights to declare that the occupier(s) in respect of the erf is the owner thereof;

The second respondent is ordered to pay the costs of the application.

N F KGOMO

JUDGE OF THE SOUTH GAUTENG

HIGH COURT, JOHANNESBURG

FOR THE APPLICANTS ADV (MS) ROSALIND J STEVENSON

INSTRUCTED BY CARVALHO HILL AND CLERK INC

MELROSE NORTH, JOHANNESBURG

TEL NO: 011 – 880 2596

FOR THE RESPONDENT

(SECOND)

INSTRUCTED BY STRAUS DALY INC, c/o ROSLEE

LION-CACHET ATTORNEYS

TEL NO: 011 – 444 4501/2/3

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