

SOUTH AFRICA / JUDGMENT

Maoba v Mohono and Others (286/2021) [2022] ZAFSHC 73 (20 January 2022)

[2022] ZAFSHC 73**COURT**

Free State High Court, Bloemfontein

BEFORE

Mzana AJ

CASE / FILE NUMBER

286/2021

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 286/2021

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between MOTLALEPULA ANDRIES MAOBA APPLICANT And MAPHEPHE EZEKIEL MOHONO FIRST RESPONDENT SETSOSO LOCAL MUNICIPALITY SECOND RESPONDENT THE MUNICIPALITY MANAGER N.O THIRD RESPONDENT THE REGISTRAR OF DEEDS, N.O FOURTH RESPONDENT DEEDS OFFICE, BLOEMFONTEIN

CORAM: MZANAAJ

HEARD ON: 15 SEPTEMBER 2021

DELIVERED ON: 20 JANUARY 2022

- [1] The applicant seeks an order to compel the first respondent to sign documents for the transfer of the immovable property, situated at Erf 1[...], Meqheleng, Ficksburg, Free State Province.

- [2] The applicant further indicated that, in the event the first respondent refuses to sign the transfer papers of the property over to the applicant, that the sheriff of the court in Ficksburg be authorised to sign the transfer papers on the behalf of the respondent.
- [3] In addition, the first respondent be ordered to deliver the original Deed of transfer held under No TE0[...], over to the Sheriff of the court in Ficksburg, who then shall deliver such an original title deed to the applicant.
- [4] The matter was argued on the Advocate appeared on behalf of the plaintiff and Advocate Thompson appeared on behalf of the respondent.

BACKGROUND

- [5] The applicant allege that somewhere in 1996 , he purchased the ERF 1[...], Meqheleng, District Ficksburg, 9730, Free State Province (herein after be referred to as the "property) from one Mr Sekete, an elderly man at the time of the said sale, was employed by the second respondent Setsoto Local Municipality. It appears that, Mr Sekete has since passed on and his confirmatory affidavit could not be obtained.
- [6] Mr Sekete did not have the Deed of transfer from the second respondent to himself at the time of the purported sale and the site was still under the ownership of the second respondent.
- [7] The applicant further stated that he has developed the property (built a house on the said Erf) with the intention to sell it. Also prior to the intended sale of the said property, he approached the second respondent in October 2020 to ensure that a deed of transfer is registered in his name and to enable him to sell the house.
- [8] During such enquiry, it came to his attention that, the property in question was in fact sold by the second respondent to one Mr Mohono (first respondent) in 2009, and held under deed of transfer: TE 1[...]. Upon further investigation he ascertained that, the first respondent is actually, the owner and occupier of another property described as Erl 1[...], Boitumelo, Ficksburg, Free State Province.
- [9] The respondent contends that it is improbable that Mr Sekete would sell the property that was not his in the first. Further that the applicant's claim is unattainable. The respondents does not deny that they erroneously registered a wrong property (one property different areas)
- [10] It was pointed out by applicant, that respondent's contentions are fraught with contradictions and this court should disregard their

submissions.

APPLICABLE LAW

- [11] ALIENATION OF LAND ACT 68 OF 1981(the ACT)

A contract for alienation of land, immovable property or rights in immovable property must be

- a. Be in writing
- b. Be signed by the parties.

If, they make use of agents, the agents must

- c. Have their written authority. Non-compliance with the section causes the contract not to be "of any force or effect".

The legislature's reasons for requiring these formalities are to prevent uncertainties, exclude disputes, and avoid malpractices and unnecessary litigation

[12] Thorpe v Trittenwein 2006 SCA, this case deals with the noncompliance with the provisions of section 2(1) of the Act, which provides that:

"No alienation of Land after the commencement of this section shall, subject to the provisions of section 28 be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents, acting on their written authority"

[13] Turning to the matter in casu, as indicated above, the applicant claims that, he bought the aforementioned property from Mr Sekete who was at the time employed by the second respondent. Strange enough, there is no evidence placed before this court or documentation presented authorising Mr Sekete to sell the property on behalf the third respondent. Therefore, the absence of any documents or papers proving that there was a written sale of agreement as suggested or requested by the Act, that the sale of land must be in writing leaves the court with no choice but to conclude that, there was never a sale of agreement/ contract. If the contract was verbal it will suffer the same fate in that verbal contract are null and void.

[13] Furthermore, it appears that, when the applicant took possession of the aforementioned Erf, he did not have purchase it from the lawful owner, being Setsoso Local Municipality, and did not ensure that a deed of transfer was registered in his name. Therefore, has no right in terms of Law to claim ownership of the aforementioned property.

[14] In the light of the above, I am of the view that, the application of the applicant cannot be attainable or enforceable. I am alive to the fact that applicant has been paying rates and taxes been residing since 1996. However, it is of importance to mention that, paying rates does not make one the rightful owner of the property.

[15] It is trite that, no legal consequences can flow from a void Jural act. In other words, "no one can transfer more rights to another than he himself has". On a conspectus of evidence, it is my view that, the sale between the applicant and Mr Skete was void aborigine.

[16] Having said that, I am not persuaded that the balance of convenience favours the applicant and of the view that the contract between the applicant and Mr Sekete has no force and effect and declared null and void.

COSTS

[17] It is an accepted legal principle that, costs ordinary follow the result, and a successful party is therefore, entitled to his or her costs. I see no reason why I should deviate from this legal principle.

ORDER

[18] Accordingly, I made the following order

Application dismissed with costs including the costs of counsel

L. MZANA AJ

On behalf of Plaintiff Advocate M. J Mpshe Commissioned by: Maoba Attorneys C/O Hanlie Fourie Attorneys Bloemfontein On behalf of the Second and Third Respondent Advocate D.R Thompson Commissioned by: Mohlokonya Attorneys Bloemfontein

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