

SOUTH AFRICA / JUDGMENT

Mashamaite v Mohlala and Others (2022/059691) [2024]

ZAGPJHC 861 (8 September 2024)

[2024] ZAGPJHC 861

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

2022/059691

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
LOCAL DIVISION, JOHANNESBURG)

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED.

DATE:

8 September 2024

Case

No. 2022/059691

In

the matter between:

LAWRENCE
MASHAMAITE
Applicant
and
THOBEDI
COLLINS MOHLALA
First
Respondent
EKURHULENI
METROPOLITAN MUNICIPALITY
Second
Respondent
REGISTRAR
OF DEEDS, JOHANNESBURG
Third
Respondent
MEC
FOR HUMAN SETTLEMENTS (GAUTENG)
Fourth
Respondent

JUDGMENT

WILSON J:

1 The applicant, Mr. Mashamaite, seeks leave to appeal against my order of 14 August 2024, in which I declared the first respondent, Mr. Mohlala, to have purchased the land at ERF 6[...] W[...] M[...], Zone [...], T[...], Gauteng Province ("the property") pursuant to a valid sale agreement.

2 In oral argument Mr. Maphutha, who appeared for Mr. Mashamaite, reduced the grounds of appeal to three distinct propositions, which I shall address in turn.

3 The first proposition is that I incorrectly rejected Mr. Mashamaite's denial that he entered into the sale agreement Mr. Mohlala alleged. It was said that I should not have accepted the documents alleged to constitute the deed of alienation as authentic, because Mr. Mashamaite had issued a bare denial that he had signed them.

4 There is no prospect of this proposition being sustained on appeal. The deed of alienation was embodied in three affidavits and an annexure commissioned by three different police officers on three different occasions across a number of months at the Tembisa Police Station. To attack their authenticity, Mr. Mashamaite plainly had to do more than insist that he did not sign them.

5 Like a sheriff's return, the statement of a commissioner of oaths that a person has signed a document and understands its contents constitutes prima facie proof of those facts. It will not lightly be impeached. Evidence must be adduced that the commissioner's statement is false.

6 There is no such evidence on the papers. In argument, Mr. Maphutha asked rhetorically what sort of evidence that might be, but it seems to me that evidence of any fact inconsistent with the proposition that Mr. Mashamaite signed the documents before a commissioner – such as evidence that he was somewhere other than Tembisa Police Station on the date the affidavit was commissioned – would have been enough. There was no such evidence, and the bare denial issued in place of it was plainly insufficient (see *Wightman t/a JW Construction v Headfour (Pty) Ltd* [2008] ZASCA 6; 2008 (3) SA 371 (SCA), paragraph 13).

7 The second proposition is that I had no evidence before me that Mr Mashamaite was in fact the owner of the property at the time that he sold it to Mr. Mohlala. It follows, so Mr. Maphutha argued, that the sale could not have passed ownership to Mr. Mohlala. However, it was common cause on the papers before me that Mr. Mashamaite was the owner of the property at the relevant time.

8 There is presently no title deed available for the property. The property was allocated to Mr. Mashamaite by the fourth respondent, the MEC. Accordingly, I gave the MEC, together with the second respondent, the Municipality, and the third respondent, the Registrar, the opportunity to adduce evidence that the property belonged to someone other than Mr. Mashamaite at the time it was sold. They all declined that opportunity.

9 There is accordingly no factual basis for the proposition that Mr. Mashamaite did not own the property when he sold it, and no prospect of a court of appeal accepting that proposition.

10 The third proposition is that the sale of the property was void for non-compliance with section 10A of the National Housing Act 107 of 1997, which states that it is a condition of every housing subsidy that a "dwelling or serviced site" acquired under the subsidy will not be alienated within eight years of its acquisition, unless the property has first been offered for sale back to the relevant provincial housing department that allocated the site or dwelling to the subsidy beneficiary.

11 Neither party canvassed the potential application of section 10A to the facts of this case on the papers a quo. The issue became relevant because I asked the parties to address the question of whether section 10A in fact applied. Although the parties argued the case a quo on the basis that the property had not been offered to the MEC under section 10A, there are no facts dealing with that issue on the papers. Nor have the parties adduced any other facts which would bring this case

within the ambit of section 10A.

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12 Moreover, the MEC, in whose favour section 10A operates, has declined to adduce evidence or present argument on the point.

13 In these circumstances, the proposition that the sale was void for non-compliance with section 10A lacks any discernible factual substrate on the papers. There is accordingly no prospect of it being accepted on appeal.

14 I ordered each party to pay their own costs a quo. There is no reason to depart from that approach in the application for leave to appeal.

15 The application for leave to appeal is dismissed, with each party paying their own costs.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 8 September 2024.

HEARD ON: 6 September 2024 DECIDED ON: 8 September 2024 For the Applicant: MR Maphutha (Heads of argument drawn by MR Maphutha and K Kabinde) Sithi and Thabela Attorneys For the First Respondent: MV Sehunane Instructed by Sehunane Attorneys Inc

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