

SOUTH AFRICA / JUDGMENT

Mkhutsane and Others v Pule and Others (2477/2016) [2017] ZAFSHC 117 (6 July 2017)

[2017] ZAFSHC 117**COURT**

Free State High Court, Bloemfontein

BEFORE

MH Rampai

CASE / FILE NUMBER

2477/2016

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA,
FREE
STATE DIVISION, BLOEMFONTEIN****Case****number: 2477/2016****In****the matter between:**

LINGIWE
MARRIAM
MKHUTSANE
1st
Plaintiff
LERATO
WINFRED
MKHUTSANE
2nd
Plaintiff
PALESA
LUCIA
MKHUTSANE
3rd
Plaintiff
PULE
GIDFREY
MOLELEKO
4th
Plaintiff

LEHLOHONOLO
CAVIN MOLELEKOA
5th
Plaintiff
and
BAILE
DORRIS PULE
1st
Defendant
MORAMANG
FREDDY MOLELEKOA
2nd
Defendant
MANGAUNG
METROPOLITAN MUNICIPALITY
3rd
Defendant
REGISTRAR
OF DEEDS (FREE STATE)
4th
Defendant
MASTER
OF HIGH
COURT
5th
Defendant
HEARD

ON: 31 MARCH 2017

JUDGMENT

BY: RAMPAL, J

DELIVERED ON: 6 JULY 2017

- [1] The matter came to court by way of action proceedings. The plaintiffs seek the relief in the form of deregistration of a transfer of a residential property by the first to the second defendant. The residual relief sought is to have such property registered in the names of the 5 plaintiffs. The action is defended.
- [2] Only the first defendant filed the requisite notice of her intention to defend the action. Such notice was duly served and filed.
- [3] The first defendant took an exception to the plaintiffs' summons. Her notice in terms of Rule 23(1) was duly served and filed. Notwithstanding service, the plaintiff took no steps to remove the causes of the first defendant's complaint.

- [4] The exception was enrolled for hearing on Friday 24 February 2017. I was seized with the matter. By agreement between the parties, the matter was postponed to 31 March 2017. The costs relative to the postponement were reserved. On 31 March 2017 I heard the first defendant's application to set the summons aside.
- [5] The first defendant's complaint was threefold. The first cause of the complaint was that the particulars of claim disclosed no cause of action. The contention was that they substantially lacked material averments necessary to sustain an action.
- [6] The second cause of the complaint was that, although the plaintiffs' prayed for a statutory relief in terms of section 6 Deeds Registries Act 47/1937, they however, neglected to plead the facts entitling them to rely on the section.
- [7] The third cause of the complaint was that the particulars of claim were vague and embarrassing.

- [8] As regards the third complaint, its source was par 5.1 of the particulars of claim. It reads:

"Plaintiffs (sic) are the descendants and/or grandchildren of the late Nozenza Winfred Molelekoa who died intestate on 25 November 2086 as shown by the death certificate attached hereto as Annexure AA."

- [9] The first ground of this particular cause of the complainant concerned the date. The alleged date has not yet come to pass. It is a future date. The difference between the alleged year of death and the year these proceedings were instituted is 70 years. To that extent, par 5.1 was inconsistent with the annexure relied upon. This was the second ground of the cause of the complaint.

- [10] The following comment is apposite:

"Also the dates of death of all deceased parties are significant to establish whether the line of succession in the property will be direct from Thomas and Ronald to Convent and Maggie's children or their estates."

vide 7 of the Master's Report filed on 30 September 2016.

- [11] I am persuaded that the first defendant is embarrassed by the two inconsistent dates which render that entire paragraph vague.

The par is capable of more than one meaning. The one, which is probably correct, is that the grandmother of the plaintiffs is no longer alive. The other, which is probably incorrect, is that she is still alive. This may sound unconvincing but the rule is clear, the defendant has the right to know the precise case she has to meet. She must not be expected to guess the case against her.

[12] If 2086 is palpably wrong as the plaintiff contended, there was no sound reason why the plaintiffs neglected to correct the error in order to remove the cause of the first defendant's complain. The refusal or neglect to remove it, implicitly cast some uncertainty as to the correctness of the other date, 25 August 1985, as stated in "anx aa". That document is obviously in conflict with the averment it was intended to support.

[13] It would have caused the plaintiffs far less expense and inconvenience to remove the third and indefensible cause of the first

defendant's complaint – than trying to defend the indefensible cause. The correct date of the grandmother is

significant to establish the correct line of succession, as the master correctly remarked.

[14] I am of the view that the plaintiffs' pleading lacked the exactness to the extent that it was embarrassing and vague. The first defendant will, therefore, be seriously prejudiced if the offending allegations in par 5.1 are not expunged – Erasmus: Superior Court Practice, B1-154. See also Net and Others NNO v McArthur and Others 2003 (4) SA 142 (T) at 147A-B. Failure to plead a significant date correctly is potentially prejudicial. This is a material consideration.

[15] Consequently, I am inclined to uphold the first defendant's objection on this third ground alone.

[16] As regards the second and the first grounds of the objection, I deem it superfluous to deal with any of them at length. The conclusion I have reached in respect of the third ground makes it unnecessary to do so. Nonetheless, I have considered those remaining grounds. As far as they are concerned, I am also satisfied that the objection has substance.

[17] Now there remains the question of costs. The first defendant's objection deserves to be upheld. The matter did not proceed on 24 February 2017 because the plaintiff's attorney was not available. He gave an acceptable explanation. That being the case, I make no order as far as those reserved costs are concerned.

[18] Accordingly I make the following order

- (a) The first defendant's objection in terms of Rule 23(1) is upheld;
- (b) The summons and the particulars of claim are set aside;
- (c) The plaintiffs are directed to pay the costs, jointly and severally, the one paying, the others to be absolved.

MH RAMPAL, J

On behalf of plaintiff: Attorney M Khang

Instructed by:

Mphafi Khang Inc

Bloemfontein

On behalf of defendant: Adv PC Ploos van Amstel

Instructed by:

Pieter Skein Attorneys

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Prepared on 10 October 2026 · Esheria