

SOUTH AFRICA / JUDGMENT

Mogege and Another v Mapuoa and Others (3989/2006) [2015]

ZAFSHC 49 (10 March 2015)

[2015] ZAFSHC 49

COURT

Free State High Court, Bloemfontein

BEFORE

Mocumie

CASE / FILE NUMBER

3989/2006

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IN HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No. : 3989/2006

In the matter between:-

RUTH MOGEGE1st Plaintiff

LAMSLEY MOGEGE2nd Plaintiff

And

TLHAKODI MAAJE SAMSON MAPUOA1st Defendant

MAPINO MITTAN MAPUOA2nd Defendant

MAHGAUNG LOCAL MUNICIPALITY3rd Defendant

DIRECTOR MAGAUNG LOCAL MUNICIPALITY4th Defendant

RESISTRAR OF DEEDS (FREE STATE)5th Defendant

THE SENIOR MAGISTRATE, CIVIL DIVISION

FOR BLOEMFONTEIN (MR H.F FRITZ)6th Defendant

JUDGMENT

BY: MOCUMIE, J

HEARD ON: 10 FEBRUARY 2015

DELIVERED ON: 10 MARCH 2015

MOCUMIE. J

- [1] Prior to the advent of democracy in 1994 African people could not own any property in their own names. The then municipalities known as councils owned the property and the occupiers and their children and descendants were granted residential permits to stay on such property. As a direct consequence to that dispensation, first and second plaintiffs' parents together with both plaintiffs stayed on Erf (4)3557 Chief Moroka, Mangaung under the residential permit appended to the papers as 'PL2'.
- [2] Between 1995 and 1996 the Local Transitional Council, Mangaung as the owner of the property under its jurisdiction, in terms of past legislation, transferred its ownership of such properties into the names of the occupiers and permit holders under the Conversion of Certain Rights to Leasehold Act 81 of 1988 which came into operation on 1 January 1989. This meant that all occupiers and or residential permit holders became owners subject to an enquiry by the Housing Committee of the Council, replaced by the third respondent under the new dispensation. Upon a determination by such committee and having satisfied certain requirements, the occupants or the person who had satisfied the requirements set, replaced the Council as owner.²
- [3] During 1991 plaintiffs' parents were the residential permit holders of the property in issue. The plaintiffs as their children were registered as although second plaintiff moved out for some time. The defendants were later registered as lessees. They stayed with the plaintiffs' family for three months as agreed upon. At the end of three months, the second plaintiff returned home and the defendants' left to look for alternative accommodation.
- [4] In 1997, Mrs Constance Mogege, the plaintiffs' mother, passed on, intestate. The plaintiffs as her heirs, continued to stay in the house as their home. Ms Mogege's death was reported to the municipality and the first plaintiff was appointed executrix of the deceased's estate and thus the only person authorised to dispose of the deceased's estate. The letter of authorisation is 'PL1'. The first plaintiff stayed on the property on her own with her child after Mrs. Mogege passed on in 1997. She effected renovations to this property to the amount of R18 000.
- [5] On 28 June 1999, she received a letter from the housing committee of the third defendant informing her that on 3 June 1999 the

Adjudication Committee of the third defendant held a meeting. Her application for the residential permit was unsuccessful. On 7 July 1999, she wrote to the director of the third defendant asking the city 'to provide our office with the relevant Act and or legislation under which the Adjudication Committee reached its decision in the above matter. Further, kindly inform our office as to whether the relevant authority makes provision for an internal appeal and if so, the higher internal authority to which appeals must be directed. Should the Adjudication Committee be the relevant authority to which appeals must be directed we confirm our client's

instructions to apply for appeal against the decision of the Committee on 3 June 1999. Furthermore, kindly provide our office with the information upon which the decision was made together with the reasons for the decision. Reasons for appeal will be furnished as soon as we have received the information requested above. The third defendant failed or refused to provide her with any answer or provide her with such reasons or to process her appeal. That was the last time she heard from the third defendant.

- [6] The next time she heard anything from the third defendant about the property in issue was when she received a letter from E.G. Coopers and Sons attorneys, representing the third and fourth defendants, dated 7 July 1999 informing her that the property was registered in the defendants' names on 6 August 1999. She was also hearing for the time about the defendants as occupiers of the property at some stage.
- [7] It is not surprising then that subsequent to this turn of events, the defendants' attempted to evict the plaintiffs from what they deem to be their property and home. The plaintiffs sought legal advice from different sources to fight the threatened eviction without luck until they approached their current legal representative which culminated into these proceedings. In this application the main relief the plaintiffs seek is the cancellation of the Title Deed TE 21650/99 (as envisaged in section 6 of the Deeds Registries Act³). The consequential relief sought by the plaintiffs is stated as follows in the Particulars of Claim: '2. That the first plaintiff in her capacity as administrator and or executrix in terms of letter of authority no. 10926/2006, is authorised to pass transfer of the property, namely Erf 3557 or 43557 Mangaung, Bloemfontein, under Title Deed No. TE21650/99; alternatively
3. That the registrar of the court or fifth defendant be authorised to sign the necessary documentation to effect such transfer...'
- [8] The opposing affidavit submitted in resistance to the relief sought in the application concludes with the following prayer: 'die kanselasie van Titelakte in hulle naam asook alle alternatiewe eise...met koste van die hand gewys word.' However on the day set out in the notice of set down duly received by the defendants', both defendants' failed to make an appearance and the application proceeded on an unopposed basis. Third and fourth defendants' had previously indicated that they will abide the decision of the court. Sixth defendant took no issue with this application from the onset as he was cited only as an interested party.
- [9] The plaintiffs' case on the papers and argument is that the Transfer Deed was unlawfully executed and ought to be cancelled. They assert that defendants illegally and fraudulently so registered the house in dispute under their names. The defendants' have never held any residential permit with regards to the property in dispute. That is why they did not append any document except the Title Deed in dispute. The plaintiffs contend that the Transfer Deed was unlawfully executed without their knowledge.

- [10] The defendants' case on the papers is that they bought the house from the plaintiffs' late mother in 1997 as the Title Deed reflects. Initially, they stayed on the property for a period of three months on their own on the property undisturbed. During that period they do not know where the plaintiffs and their late mother were staying. They deny that they ever stayed on the property as lessees. The plaintiffs intimidated them and made threats against them to the extent that they reported them to the police. When the police failed to take any steps against the plaintiffs, they moved out of the house in dispute. They further deny that that the registration was done illegally as the plaintiffs allege or at the instance of the third and fourth defendants as the plaintiffs seem to insinuate. Despite all their assertions they ask merely for the dismissal of the application with costs. They have made no counter claim for any order to establish the validity of the steps they have taken which are inconsistent with the rights claimed by the plaintiffs.
- [11] As I understand the scheme of the Conversion Act, when it came into operation on 1 January 1988 Mrs Mogege's residential permit became eligible for conversion into leasehold tenure, subject to the holding of an inquiry by the Director General in terms of section 2 of the same Act. In the absence of the third and fourth defendants' take on this matter the only reasonable conclusion that can be drawn from the facts is that no proper enquiry was held by the third defendant. Had such enquiry been held, the plaintiffs as the occupiers of the property in dispute would have been called to attend such enquiry. In the worst case scenario, in the event that the third defendant had taken a decision to sell the property in issue, it would have been obliged to advertise such sale. The advert would, in all probabilities, have warned the plaintiffs about the defendants' closely guarded actions.
- [12] Of concern, is the fact that the property in dispute was disposed of whilst the first plaintiff was the sole executrix of the deceased's estate. Not to call her to a meeting or an inquiry as prescribed by the Conversion Act was unlawful and points to fraudulent conduct on the part of the officials of the third defendant. That is why the plaintiffs were never provided with reasons why they were overlooked by the Adjudicating Committee when it dealt with their property. There is sufficient evidence on the papers to indicate that the property has always belonged to the Mogege family and none on the part of the defendants. I, in any event find that the purported sale was contrary to the scheme of the Conversion Act and unlawful. The transfer of the property into the names of the defendants is null and void ab initio. The only option I am left with in order to redress this unlawful conduct is to cancel the Title Deed TE 21650/99, as envisaged in section 6 of the Deeds Registries Act.
- [13] The general rule is that the winning party must get its costs. I have no reason not to follow this rule.
- [14] In the result I make the following order.

ORDER

1. It is declared that the Deed of Transfer in relation to Erf 3557 Chief Moroka crescent, Rocklands Mangaung Bloemfontein Township, registration Division IQ, Province of Free State, held by Certificate of Township Title Number: TE 21650/99 is null and void ab initio.
2. The Registrar of Deeds (Bloemfontein, Free State) (5th respondent) is ordered to cancel the Deed of Transfer referred to in paragraph 1 above.
3. The Registrar of Deeds (Bloemfontein, Free State) (5th defendant) is ordered to cancel the Certificate of Ownership referred to in paragraph 1 above registered in the names of Tlhakodi Maafe Samson Mapuoa and Mapino Mittan Mapuoa and register it in the names of the first plaintiff, Ms. Ruth Mogege.
4. The first and second respondents are directed to pay the plaintiffs costly jointly and severally, the one paying the other to be absolved.

B. C. MOCUMIE, J

On behalf of the plaintiff: Mr. Khang

Instructed by:

Mphafi Khang Inc.

Bloemfontein

1Its purpose , as shown by the long title, was, to provide for the conversion of certain occupational rights in development areas for leasehold, and for matters connected therewith.

2See Nzimande v Nzimande & Another 2005

- (1) SA 83 (W) for a useful discussion of the important legislative history surrounding the Conversion Act and the categories of tenure it regulates. See also Toho v Diepmeadow City Council & Another 1993
- (3) SA 679 (W); Kuzwayo v Representative of the Executor in the Estate of the late Masilela [2011] 2 All SA 599 (SCA).

3Deeds Registries Act 47 of 1937.

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